

**MVRS PUBLICATIONS, INC., MARS C. LACONSAY, MYLA C. AGUJA
AND AGUSTINO G. BINEGAS, JR., PETITIONERS, VS. ISLAMIC
DA'WAH COUNCIL OF THE PHILIPPINES, INC.,
ABDUL-RAHMAN R.T. LINZAG...**

G.R. No. 135306. January 28, 2003

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

I may utterly detest what you write, but I shall fight
to the death to make it possible for you to
continue writing it. - Voltaire

Voltaire's pontifical verse bestirs once again the basic liberties to free speech and free press - liberties that belong as well, if not more, to those who question, who do not conform, who differ. For the ultimate good which we all strive to achieve for ourselves and our posterity can better be reached by a free exchange of ideas, where the best test of truth is the power of the thought to get itself accepted in the competition of the free market - not just the ideas we desire, but including those thoughts we despise.[1]

ISLAMIC DA'WAH COUNCIL OF THE PHILIPPINES, INC., a local federation of more than seventy (70) Muslim religious organizations, and individual Muslims ABDULRAHMAN R.T. LINZAG, IBRAHIM F.P. ARCILLA, ABDUL RASHID DE GUZMAN, AL-FARED DA SILVA and IBRAHIM B.A. JUNIO, filed in the Regional Trial Court of Manila a complaint for damages in their own behalf and as a class suit in behalf of the Muslim members nationwide against MVRS PUBLICATIONS, INC., MARS C. LACONSAY, MYLA C. AGUJA and AGUSTINO G. BINEGAS, JR., arising from an article published in the 1 August 1992 issue of Bulgar, a daily tabloid. The article reads:

"ALAM BA NINYO?

Na ang mga baboy at kahit anong uri ng hayop sa Mindanao ay hindi kinakain ng mga Muslim?

Para sa kanila ang mga ito ay isang sagradong bagay. Hindi nila ito kailangang kainin kahit na sila pa ay magutom at mawalan ng ulam sa tuwing sila ay kakain. Ginagawa nila itong Diyos at sinasamba pa nila ito sa tuwing araw ng kanilang pangangilin lalung-lalo na sa araw na tinatawag nilang 'Ramadan'."

The complaint alleged that the libelous statement was insulting and damaging to the Muslims; that these words alluding to the pig as the God of the Muslims was not only published out of sheer ignorance but with intent to hurt the feelings, cast insult and disparage the Muslims and Islam, as a religion in this country, in violation of law, public policy, good morals and human relations; that on account of these libelous words Bulgar insulted not only the Muslims in the Philippines but the entire Muslim world, especially every Muslim individual in non-Muslim countries.

MVRS PUBLICATIONS, INC., and AGUSTINO G. BINEGAS, JR., in their defense, contended that the article

did not mention respondents as the object of the article and therefore were not entitled to damages; and, that the article was merely an expression of belief or opinion and was published without malice nor intention to cause damage, prejudice or injury to Muslims.[2]

On 30 June 1995 the trial court dismissed the complaint holding that the plaintiffs failed to establish their cause of action since the persons allegedly defamed by the article were not specifically identified -

It must be noted that the persons allegedly defamed, the herein plaintiffs, were not identified with specificity. The subject article was directed at the Muslims without mentioning or identifying the herein plaintiffs x x x x It is thus apparent that the alleged libelous article refers to the larger collectivity of Muslims for which the readers of the libel could not readily identify the personalities of the persons defamed. Hence, it is difficult for an individual Muslim member to prove that the defamatory remarks apply to him. The evidence presented in this case failed to convince this court that, indeed, the defamatory remarks really applied to the herein plaintiffs.[3]

On 27 August 1998 the Court of Appeals reversed the decision of the trial court. It opined that it was "clear from the disputed article that the defamation was directed to all adherents of the Islamic faith. It stated that pigs were sacred and idolized as god by members of the Muslim religion. This libelous imputation undeniably applied to the plaintiff-appellants who are Muslims sharing the same religious beliefs." It added that the suit for damages was a "class suit" and that ISLAMIC DA'WAH COUNCIL OF THE PHILIPPINES, INC.'s religious status as a Muslim umbrella organization gave it the requisite personality to sue and protect the interests of all Muslims.[4]

Hence, the instant petition for review assailing the findings of the appellate court (a) on the existence of the elements of libel, (b) the right of respondents to institute the class suit, and, (c) the liability of petitioners for moral damages, exemplary damages, attorney's fees and costs of suit.

Defamation, which includes libel and slander, means the offense of injuring a person's character, fame or reputation through false and malicious statements.[5] It is that which tends to injure reputation or to diminish the esteem, respect, good will or confidence in the plaintiff or to excite derogatory feelings or opinions about the plaintiff.[6] It is the publication of anything which is injurious to the good name or reputation of another or tends to bring him into disrepute.[7] Defamation is an invasion of a relational interest since it involves the opinion which others in the community may have, or tend to have, of the plaintiff.[8]

It must be stressed that words which are merely insulting are not actionable as libel or slander per se, and mere words of general abuse however opprobrious, ill-natured, or vexatious, whether written or spoken, do not constitute a basis for an action for defamation in the absence of an allegation for special damages.[9] The fact that the language is offensive to the plaintiff does not make it actionable by itself.[10]

Declarations made about a large class of people cannot be interpreted to advert to an identified or identifiable individual. Absent circumstances specifically pointing or alluding to a particular member of a class, no member of such class has a right of action[11] without at all impairing the equally demanding right of free speech and expression, as well as of the press, under the Bill of Rights.[12] Thus, in *Newsweek, Inc. v. Intermediate Appellate Court*,[13] we dismissed a complaint for libel against Newsweek, Inc., on the ground that private respondents failed to state a cause of action since they made no allegation in the complaint that anything contained in the article complained of specifically referred to any of them. Private respondents, incorporated associations of sugarcane planters in Negros Occidental claiming to have 8,500 members and several individual members, filed a class action suit for damages in behalf of all sugarcane planters in Negros Occidental. The complaint filed in the Court of First Instance of Bacolod City alleged that Newsweek, Inc., committed libel against them by the publication of the article "Island of Fear" in its weekly newsmagazine allegedly depicting

Negros Province as a place dominated by wealthy landowners and sugar planters who not only exploited the impoverished and underpaid sugarcane workers but also brutalized and killed them with impunity. Private respondents alleged that the article showed a deliberate and malicious use of falsehood, slanted presentation and/or misrepresentation of facts intended to put the sugarcane planters in a bad light, expose them to public ridicule, discredit and humiliation in the Philippines and abroad, and make them the objects of hatred, contempt and hostility of their agricultural workers and of the public in general. We ratiocinated -

x x x where the defamation is alleged to have been directed at a group or class, it is essential that the statement must be so sweeping or all-embracing as to apply to every individual in that group or class, or sufficiently specific so that each individual in the class or group can prove that the defamatory statement specifically pointed to him, so that he can bring the action separately, if need be x x x x The case at bar is not a class suit. It is not a case where one or more may sue for the benefit of all, or where the representation of class interest affected by the judgment or decree is indispensable to make each member of the class an actual party. We have here a case where each of the plaintiffs has a separate and distinct reputation in the community. They do not have a common or general interest in the subject matter of the controversy.

In the present case, there was no fairly identifiable person who was allegedly injured by the Bulgar article. Since the persons allegedly defamed could not be identifiable, private respondents have no individual causes of action; hence, they cannot sue for a class allegedly disparaged. Private respondents must have a cause of action in common with the class to which they belong to in order for the case to prosper.

An individual Muslim has a reputation that is personal, separate and distinct in the community. Each Muslim, as part of the larger Muslim community in the Philippines of over five (5) million people, belongs to a different trade and profession; each has a varying interest and a divergent political and religious view -some may be conservative, others liberal. A Muslim may find the article dishonorable, even blasphemous; others may find it as an opportunity to strengthen their faith and educate the non-believers and the "infidels." There is no injury to the reputation of the individual Muslims who constitute this community that can give rise to an action for group libel. Each reputation is personal in character to every person. Together, the Muslims do not have a single common reputation that will give them a common or general interest in the subject matter of the controversy.

In *Arcand v. The Evening Call Publishing Company*,^[14] the United States Court of Appeals held that one guiding principle of group libel is that defamation of a large group does not give rise to a cause of action on the part of an individual unless it can be shown that he is the target of the defamatory matter.

The rule on libel has been restrictive. In an American case,^[15] a person had allegedly committed libel against all persons of the Jewish religion. The Court held that there could be no libel against an extensive community in common law. In an English case, where libel consisted of allegations of immorality in a Catholic nunnery, the Court considered that if the libel were on the whole Roman Catholic Church generally, then the defendant must be absolved.^[16] With regard to the largest sectors in society, including religious groups, it may be generally concluded that no criminal action at the behest of the state, or civil action on behalf of the individual, will lie.

In another case, the plaintiffs claimed that all Muslims, numbering more than 600 million, were defamed by the airing of a national television broadcast of a film depicting the public execution of a Saudi Arabian princess accused of adultery, and alleging that such film was "insulting and defamatory" to the Islamic religion.^[17] The United States District Court of the Northern District of California concluded that the plaintiffs' prayer for \$20 Billion in damages arising from "an international conspiracy to insult, ridicule, discredit and abuse followers of Islam throughout the world, Arabs and the Kingdom of Saudi Arabia" bordered on the "frivolous," ruling that the plaintiffs had failed to demonstrate an actionable claim for defamation. The California Court stressed that the aim of the law on defamation was to protect individuals; a group may be sufficiently large that a statement concerning

it could not defame individual group members.[18]

Philip Wittenberg, in his book "Dangerous Words: A Guide to the Law of Libel,"[19] discusses the inappropriateness of any action for tortious libel involving large groups, and provides a succinct illustration:

There are groupings which may be finite enough so that a description of the body is a description of the members. Here the problem is merely one of evaluation. Is the description of the member implicit in the description of the body, or is there a possibility that a description of the body may consist of a variety of persons, those included within the charge, and those excluded from it?

A general charge that the lawyers in the city are shysters would obviously not be a charge that all of the lawyers were shysters. A charge that the lawyers in a local point in a great city, such as Times Square in New York City, were shysters would obviously not include all of the lawyers who practiced in that district; but a statement that all of the lawyers who practiced in a particular building in that district were shysters would be a specific charge, so that any lawyer having an office within that building could sue.

If the group is a very large one, then the alleged libelous statement is considered to have no application to anyone in particular, since one might as well defame all mankind. Not only does the group as such have no action; the plaintiff does not establish any personal reference to himself.[20] At present, modern societal groups are both numerous and complex. The same principle follows with these groups: as the size of these groups increases, the chances for members of such groups to recover damages on tortious libel become elusive. This principle is said to embrace two (2) important public policies: first, where the group referred to is large, the courts presume that no reasonable reader would take the statements as so literally applying to each individual member; and second, the limitation on liability would satisfactorily safeguard freedom of speech and expression, as well as of the press, effecting a sound compromise between the conflicting fundamental interests involved in libel cases.[21]

In the instant case, the Muslim community is too vast as to readily ascertain who among the Muslims were particularly defamed. The size of the group renders the reference as indeterminate and generic as a similar attack on Catholics, Protestants, Buddhists or Mormons would do. The word "Muslim" is descriptive of those who are believers of Islam, a religion divided into varying sects, such as the Sunnites, the Shiites, the Kharijites, the Sufis and others based upon political and theological distinctions. "Muslim" is a name which describes only a general segment of the Philippine population, comprising a heterogeneous body whose construction is not so well defined as to render it impossible for any representative identification.

The Christian religion in the Philippines is likewise divided into different sects: Catholic, Baptist, Episcopalian, Presbyterian, Lutheran, and other groups the essence of which may lie in an inspired charlatan, whose temple may be a corner house in the fringes of the countryside. As with the Christian religion, so it is with other religions that represent the nation's culturally diverse people and minister to each one's spiritual needs. The Muslim population may be divided into smaller groups with varying agenda, from the prayerful conservative to the passionately radical. These divisions in the Muslim population may still be too large and ambiguous to provide a reasonable inference to any personality who can bring a case in an action for libel.

The foregoing are in essence the same view scholarly expressed by Mr. Justice Reynato S. Puno in the course of the deliberations in this case. We extensively reproduce hereunder his comprehensive and penetrating discussion on group libel -

Defamation is made up of the twin torts of libel and slander – the one being, in general, written, while the other in general is oral. In either form, defamation is an invasion of the interest in reputation and good name. This is a "relational interest" since it involves the opinion others in the community may have, or tend to have of the plaintiff.

The law of defamation protects the interest in reputation – the interest in acquiring, retaining and enjoying one’s reputation as good as one’s character and conduct warrant. The mere fact that the plaintiff’s feelings and sensibilities have been offended is not enough to create a cause of action for defamation. Defamation requires that something be communicated to a third person that may affect the opinion others may have of the plaintiff. The unprivileged communication must be shown of a statement that would tend to hurt plaintiff’s reputation, to impair plaintiff’s standing in the community.

Although the gist of an action for defamation is an injury to reputation, the focus of a defamation action is upon the allegedly defamatory statement itself and its predictable effect upon third persons. A statement is ordinarily considered defamatory if it “tend[s] to expose one to public hatred, shame, obloquy, contumely, odium, contempt, ridicule, aversion, ostracism, degradation or disgrace...” The Restatement of Torts defines a defamatory statement as one that “tends to so harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.”

Consequently as a prerequisite to recovery, it is necessary for the plaintiff to prove as part of his prima facie case that the defendant (1) published a statement that was (2) defamatory (3) of and concerning the plaintiff.

The rule in libel is that the action must be brought by the person against whom the defamatory charge has been made. In the American jurisdiction, no action lies by a third person for damages suffered by reason of defamation of another person, even though the plaintiff suffers some injury therefrom. For recovery in defamation cases, it is necessary that the publication be “of and concerning the plaintiff.” Even when a publication may be clearly defamatory as to somebody, if the words have no personal application to the plaintiff, they are not actionable by him. If no one is identified, there can be no libel because no one’s reputation has been injured x x x x

In fine, in order for one to maintain an action for an alleged defamatory statement, it must appear that the plaintiff is the person with reference to whom the statement was made. This principle is of vital importance in cases where a group or class is defamed since, usually, the larger the collective, the more difficult it is for an individual member to show that he was the person at whom the defamation was directed.

If the defamatory statements were directed at a small, restricted group of persons, they applied to any member of the group, and an individual member could maintain an action for defamation. When the defamatory language was used toward a small group or class, including every member, it has been held that the defamatory language referred to each member so that each could maintain an action. This small group or class may be a jury, persons engaged in certain businesses, professions or employments, a restricted subdivision of a particular class, a society, a football team, a family, small groups of union officials, a board of public officers, or engineers of a particular company.

In contrast, if defamatory words are used broadly in respect to a large class or group of persons, and there is nothing that points, or by proper colloquium or innuendo can be made to apply, to a particular member of the class or group, no member has a right of action for libel or slander. Where the defamatory matter had no special, personal application and was so general that no individual damages could be presumed, and where the class referred to was so numerous that great vexation and oppression might grow out of the multiplicity of suits, no private action could be maintained. This rule has been applied to defamatory publications concerning groups or classes of persons engaged in a particular business, profession or employment, directed at associations or groups of association officials, and to those directed at miscellaneous groups or classes of persons.

Distinguishing a small group-which if defamed entitles all its members to sue from a large group – which if defamed entitles no one to sue – is not always so simple. Some authorities have noted that in cases permitting recovery, the group generally has twenty five (25) or fewer members. However, there is usually no articulated limit on size. Suits have been permitted by members of fairly large groups when some distinguishing characteristic of the individual or group increases the likelihood that the statement could be interpreted to apply

individually. For example, a single player on the 60 to 70 man Oklahoma University football team was permitted to sue when a writer accused the entire team of taking amphetamines to “hop up” its performance; the individual was a fullback, i.e., a significant position on the team and had played in all but two of the team’s games.

A prime consideration, therefore, is the public perception of the size of the group and whether a statement will be interpreted to refer to every member. The more organized and cohesive a group, the easier it is to tar all its members with the same brush and the more likely a court will permit a suit from an individual even if the group includes more than twenty five (25) members. At some point, however, increasing size may be seen to dilute the harm to individuals and any resulting injury will fall beneath the threshold for a viable lawsuit.

x x x x There are many other groupings of men than those that are contained within the foregoing group classifications. There are all the religions of the world, there are all the political and ideological beliefs; there are the many colors of the human race. Group defamation has been a fertile and dangerous weapon of attack on various racial, religious and political minorities. Some states, therefore, have passed statutes to prevent concerted efforts to harass minority groups in the United States by making it a crime to circulate insidious rumors against racial and religious groups. Thus far, any civil remedy for such broadside defamation has been lacking.

There have been numerous attempts by individual members to seek redress in the courts for libel on these groups, but very few have succeeded because it felt that the groups are too large and poorly defined to support a finding that the plaintiff was singled out for personal attack x x x x (citations omitted).

Our conclusion therefore is that the statements published by petitioners in the instant case did not specifically identify nor refer to any particular individuals who were purportedly the subject of the alleged libelous publication. Respondents can scarcely claim to having been singled out for social censure pointedly resulting in damages.

A contrary view is expressed that what is involved in the present case is an intentional tortious act causing mental distress and not an action for libel. That opinion invokes *Chaplinsky v. New Hampshire*[22] where the U.S. Supreme Court held that words heaping extreme profanity, intended merely to incite hostility, hatred or violence, have no social value and do not enjoy constitutional protection; and *Beauharnais v. Illinois*[23] where it was also ruled that hate speech which denigrates a group of persons identified by their religion, race or ethnic origin defames that group and the law may validly prohibit such speech on the same ground as defamation of an individual.

We do not agree to the contrary view articulated in the immediately preceeding paragraph. Primarily, an “emotional distress” tort action is personal in nature, i.e., it is a civil action filed by an individual[24] to assuage the injuries to his emotional tranquility due to personal attacks on his character. It has no application in the instant case since no particular individual was identified in the disputed article of Bulgar. Also, the purported damage caused by the article, assuming there was any, falls under the principle of relational harm - which includes harm to social relationships in the community in the form of defamation; as distinguished from the principle of reactive harm - which includes injuries to individual emotional tranquility in the form of an infliction of emotional distress. In their complaint, respondents clearly asserted an alleged harm to the standing of Muslims in the community, especially to their activities in propagating their faith in Metro Manila and in other non-Muslim communities in the country.[25] It is thus beyond cavil that the present case falls within the application of the relational harm principle of tort actions for defamation, rather than the reactive harm principle on which the concept of emotional distress properly belongs.

Moreover, under the Second Restatement of the Law, to recover for the intentional infliction of emotional distress

the plaintiff must show that: (a) The conduct of the defendant was intentional or in reckless disregard of the plaintiff; (b) The conduct was extreme and outrageous; (c) There was a causal connection between the defendant's conduct and the plaintiff's mental distress; and, (d) The plaintiff's mental distress was extreme and severe.[26]

"Extreme and outrageous conduct" means conduct that is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in civilized society. The defendant's actions must have been so terrifying as naturally to humiliate, embarrass or frighten the plaintiff.[27] Generally, conduct will be found to be actionable where the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him or her to exclaim, "Outrageous!" as his or her reaction.[28]

"Emotional distress" means any highly unpleasant mental reaction such as extreme grief, shame, humiliation, embarrassment, anger, disappointment, worry, nausea, mental suffering and anguish, shock, fright, horror, and chagrin.[29] "Severe emotional distress," in some jurisdictions, refers to any type of severe and disabling emotional or mental condition which may be generally recognized and diagnosed by professionals trained to do so, including posttraumatic stress disorder, neurosis, psychosis, chronic depression, or phobia.[30] The plaintiff is required to show, among other things, that he or she has suffered emotional distress so severe that no reasonable person could be expected to endure it; severity of the distress is an element of the cause of action, not simply a matter of damages.[31]

Any party seeking recovery for mental anguish must prove more than mere worry, anxiety, vexation, embarrassment, or anger. Liability does not arise from mere insults, indignities, threats, annoyances, petty expressions, or other trivialities. In determining whether the tort of outrage had been committed, a plaintiff is necessarily expected and required to be hardened to a certain amount of criticism, rough language, and to occasional acts and words that are definitely inconsiderate and unkind; the mere fact that the actor knows that the other will regard the conduct as insulting, or will have his feelings hurt, is not enough.[32]

Hustler Magazine v. Falwell[33] illustrates the test case of a civil action for damages on intentional infliction of emotional distress. A parody appeared in Hustler magazine featuring the American fundamentalist preacher and evangelist Reverend Jerry Falwell depicting him in an inebriated state having an incestuous sexual liaison with his mother in an outhouse. Falwell sued Hustler and its publisher Larry Flynt for damages. The United States District Court for the Western District of Virginia ruled that the parody was not libelous, because no reasonable reader would have understood it as a factual assertion that Falwell engaged in the act described. The jury, however, awarded \$200,000 in damages on a separate count of "intentional infliction of emotional distress," a cause of action that did not require a false statement of fact to be made. The United States Supreme Court in a unanimous decision overturned the jury verdict of the Virginia Court and held that Reverend Falwell may not recover for intentional infliction of emotional distress. It was argued that the material might be deemed outrageous and may have been intended to cause severe emotional distress, but these circumstances were not sufficient to overcome the free speech rights guaranteed under the First Amendment of the United States Constitution. Simply stated, an intentional tort causing emotional distress must necessarily give way to the fundamental right to free speech.

It must be observed that although Falwell was regarded by the U.S. High Court as a "public figure," he was an individual particularly singled out or identified in the parody appearing on Hustler magazine. Also, the emotional distress allegedly suffered by Reverend Falwell involved a reactive interest - an emotional response to the parody which supposedly injured his psychological well-being.

Verily, our position is clear that the conduct of petitioners was not extreme or outrageous. Neither was the emotional distress allegedly suffered by respondents so severe that no reasonable person could be expected to

endure it. There is no evidence on record that points to that result.

Professor William Prosser, views tort actions on intentional infliction of emotional distress in this manner[34] -

There is virtually unanimous agreement that such ordinary defendants are not liable for mere insult, indignity, annoyance, or even threats, where the case is lacking in other circumstances of aggravation. The reasons are not far to seek. Our manners, and with them our law, have not yet progressed to the point where we are able to afford a remedy in the form of tort damages for all intended mental disturbance. Liability of course cannot be extended to every trivial indignity x x x x The plaintiff must necessarily be expected and required to be hardened to a certain amount of rough language, and to acts that are definitely inconsiderate and unkind x x x The plaintiff cannot recover merely because of hurt feelings.

Professor Calvert Magruder reinforces Prosser with this succinct observation, viz:[35]

There is no occasion for the law to intervene in every case where someone's feelings are hurt. There must still be freedom to express an unflattering opinion, and some safety valve must be left through which irascible tempers may blow off relatively harmless steam.

Thus, it is evident that even American courts are reluctant to adopt a rule of recovery for emotional harm that would "open up a wide vista of litigation in the field of bad manners," an area in which a "toughening of the mental hide" was thought to be a more appropriate remedy.[36] Perhaps of greater concern were the questions of causation, proof, and the ability to accurately assess damages for emotional harm, each of which continues to concern courts today.[37]

In this connection, the doctrines in *Chaplinsky* and *Beauharnais* had largely been superseded by subsequent First Amendment doctrines. Back in simpler times in the history of free expression the Supreme Court appeared to espouse a theory, known as the Two-Class Theory, that treated certain types of expression as taboo forms of speech, beneath the dignity of the First Amendment. The most celebrated statement of this view was expressed in *Chaplinsky*:

There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words – those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.

Today, however, the theory is no longer viable; modern First Amendment principles have passed it by. American courts no longer accept the view that speech may be proscribed merely because it is "lewd," "profane," "insulting" or otherwise vulgar or offensive.[38] *Cohen v. California*[38] is illustrative: Paul Robert Cohen wore a jacket bearing the words "Fuck the Draft" in a Los Angeles courthouse in April 1968, which caused his eventual arrest. Cohen was convicted for violating a California statute prohibiting any person from "disturb[ing] the peace x x x by offensive conduct." The U.S. Supreme Court conceded that Cohen's expletive contained in his jacket was "vulgar," but it concluded that his speech was nonetheless protected by the right to free speech. It was neither considered an "incitement" to illegal action nor "obscenity." It did not constitute insulting or "fighting" words for it had not been directed at a person who was likely to retaliate or at someone who could not avoid the message. In other words, no one was present in the Los Angeles courthouse who would have regarded Cohen's speech as a direct personal insult, nor was there any danger of reactive violence against him.

No specific individual was targeted in the allegedly defamatory words printed on Cohen's jacket. The conviction could only be justified by California's desire to exercise the broad power in preserving the cleanliness of

discourse in the public sphere, which the U.S. Supreme Court refused to grant to the State, holding that no objective distinctions can be made between vulgar and nonvulgar speech, and that the emotive elements of speech are just as essential in the exercise of this right as the purely cognitive. As Mr. Justice Harlan so eloquently wrote: "[O]ne man's vulgarity is another man's lyric x x x words are often chosen as much for their emotive as their cognitive force." [40] With *Cohen*, the U.S. Supreme Court finally laid the constitutional foundation for judicial protection of provocative and potentially offensive speech.

Similarly, libelous speech is no longer outside the First Amendment protection. Only one small piece of the Two-Class Theory in *Chaplinsky* survives - U.S. courts continue to treat "obscene" speech as not within the protection of the First Amendment at all. With respect to the "fighting words" doctrine, while it remains alive it was modified by the current rigorous clear and present danger test. [41] Thus, in *Cohen* the U.S. Supreme Court in applying the test held that there was no showing that Cohen's jacket bearing the words "Fuck the Draft" had threatened to provoke imminent violence; and that protecting the sensibilities of onlookers was not sufficiently compelling interest to restrain Cohen's speech.

Beauharnais, which closely followed the *Chaplinsky* doctrine, suffered the same fate as *Chaplinsky*. Indeed, when *Beauharnais* was decided in 1952, the Two-Class Theory was still flourishing. While concededly the U.S. High Tribunal did not formally abandon *Beauharnais*, the seminal shifts in U.S. constitutional jurisprudence substantially undercut *Beauharnais* and seriously undermined what is left of its vitality as a precedent. Among the cases that dealt a crushing impact on *Beauharnais* and rendered it almost certainly a dead letter case law are *Brandenburg v. Ohio*, [42] and, again, *Cohen v. California*. [43] These decisions recognize a much narrower set of permissible grounds for restricting speech than did *Beauharnais*. [44]

In *Brandenburg*, appellant who was a leader of the Ku Klux Klan was convicted under the Ohio Criminal Syndicalism Statute for advocating the necessity, duty and propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reforms; and for voluntarily assembling with a group formed to teach or advocate the doctrines of criminal syndicalism. Appellant challenged the statute and was sustained by the U.S. Supreme Court, holding that the advocacy of illegal action becomes punishable only if such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. [45] Except in unusual instances, *Brandenburg* protects the advocacy of lawlessness as long as such speech is not translated into action.

The importance of the *Brandenburg* ruling cannot be overemphasized. Prof. Smolla affirmed that "*Brandenburg* must be understood as overruling *Beauharnais* and eliminating the possibility of treating group libel under the same First Amendment standards as individual libel." [46] It may well be considered as one of the lynchpins of the modern doctrine of free speech, which seeks to give special protection to politically relevant speech.

In any case, respondents' lack of cause of action cannot be cured by the filing of a class suit. As correctly pointed out by Mr. Justice Jose C. Vitug during the deliberations, "an element of a class suit is the adequacy of representation. In determining the question of fair and adequate representation of members of a class, the court must consider (a) whether the interest of the named party is coextensive with the interest of the other members of the class; (b) the proportion of those named parties as it so bears to the total membership of the class; and, (c) any other factor bearing on the ability of the named party to speak for the rest of the class." [47]

The rules require that courts must make sure that the persons intervening should be sufficiently numerous to fully protect the interests of all concerned. In the present controversy, Islamic Da'wah Council of the Philippines, Inc., seeks in effect to assert the interests not only of the Muslims in the Philippines but of the whole Muslim world as well. Private respondents obviously lack the sufficiency of numbers to represent such a global group; neither have

they been able to demonstrate the identity of their interests with those they seek to represent. Unless it can be shown that there can be a safe guaranty that those absent will be adequately represented by those present, a class suit, given its magnitude in this instance, would be unavailing." [48]

Likewise on the matter of damages, we agree that "moral damages may be recovered only if the plaintiff is able to satisfactorily prove the existence of the factual basis for the damages and its causal connection with the acts complained of, [49] and so it must be, as moral damages although incapable of pecuniary estimation are designed not to impose a penalty but to compensate for injury sustained and actual damages suffered. [50] Exemplary damages, on the other hand, may only be awarded if claimant is able to establish his right to moral, temperate, liquidated or compensatory damages. [51] Unfortunately, neither of the requirements to sustain an award for either of these damages would appear to have been adequately established by respondents."

In a pluralistic society like the Philippines where misinformation about another individual's religion is as commonplace as self-appointed critics of government, it would be more appropriate to respect the fair criticism of religious principles, including those which may be outrageously appalling, immensely erroneous, or those couched as fairly informative comments. The greater danger in our society is the possibility that it may encourage the frequency of suits among religious fundamentalists, whether Christian, Muslim, Hindu, Buddhist, Jewish, or others. This would unnecessarily make the civil courts a battleground to assert their spiritual ideas, and advance their respective religious agenda.

It need not be stressed that this Court has no power to determine which is proper religious conduct or belief; neither does it have the authority to rule on the merits of one religion over another, nor declare which belief to uphold or cast asunder, for the validity of religious beliefs or values are outside the sphere of the judiciary. Such matters are better left for the religious authorities to address what is rightfully within their doctrine and realm of influence. Courts must be viewpoint-neutral when it comes to religious matters if only to affirm the neutrality principle of free speech rights under modern jurisprudence where "[a]ll ideas are treated equal in the eyes of the First Amendment - even those ideas that are universally condemned and run counter to constitutional principles." [52] Under the right to free speech, "there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." [53] Denying certiorari and affirming the appellate court decision would surely create a chilling effect on the constitutional guarantees of freedom of speech, of expression, and of the press.

WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals dated 27 August 1998 is REVERSED and SET ASIDE, and the Decision of the RTC-Br. 4, Manila, dismissing the complaint for lack of merit, is REINSTATED and AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Corona, and Callejo, Sr., JJ., concur. Vitug, J., see concurring opinion.

Mendoza, J., in the result.

Carpio, and Austria-Martinez, JJ., see dissenting opinion.

Panganiban, and Carpio-Morales, JJ., joins the dissent of J. Carpio.

Azcuna, J., joins the dissent of Justice Austria-Martinez.

[1] Cf. Holmes, J., dissenting in *Abrams v. United States*, 250 U.S. 630.

[2] Petitioners Mars C. Laconsay and Myla C. Aguja failed to file their Answer and were declared in default.

[3] Decision penned by Judge Vetino E. Reyes, RTC-Br. 4, Manila, Civil Case No. 92-62441, "Islamic Da'wah Council of the Philippines, Inc. v. MVRIS Publications, Inc."

[4] Decision penned by Justice Teodoro P. Regino, concurred in by Justices Quirino D. Abad Santos, Jr., and Conrado M. Vasquez, Jr.

[5] Black's Law Dictionary (4th ed. 1951), 505.

[6] Words and Phrases, "Defamation," citing Local 15 of Independent Workers of Noble County, Inc. v. International Broth. of Elec. Workers, D.C., Ind., 273 F. Supp. 313, 320.

[7] Id., citing Whitby v. Associates Discount Corp., 207 N.E. 2d 482, 484, 591 Ill. App. 2d 337.

[8] Prosser and Keeton on Torts, (5th ed. 1984).

[9] 50 Am. Jur. 2d, "Libel and Slander," 705 (1995).

[10] Ibid.

[11] 50 Am Jur 2d, "Libel and Slander," 674 (1995).

[12] Art. III, Sec. 4, 1987 Constitution.

[13] G.R. No. 63559, 30 May 1986, 142 SCRA 171, 176-177.

[14] 567 F. 2d 1163, 1164 (1977).

[15] P. Wittenberg, "Dangerous Words: A Guide to the Law of Libel," 226-227, citing People v. Edmondson, 168 N.Y. Misc. 141.

[16] Id., 227, citing Rex v. Gathercole, 2 Lewin 237.

[17] Khalid Abdullah Tariq Al Mansour Faissal Fahd Al Talal v. Fanning, Civ. No. C 80-1869 RPA, 25 September 1980, 506 F.Supp. 186.

[18] Id., 187.

[19] Ibid.

[20] See note 8, 767-768.

[21] 50 Am Jur 2d, 675 (1995).

[22] 315 U.S. 568 (1942).

[23] 343 U.S. 250 (1952).

[24] Not a group, unless the attack is directed against identifiable individuals within the group.

[25] Rollo, 55.

[26] See SECOND RESTATEMENT OF THE LAW, TORTS 2D § 46.

§ 46. Outrageous Conduct Causing Severe Emotional Distress

(1) One who by extreme and outrageous conduct intentionally x x x causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm. x x x

[27] See 38 Am. Jur. 2d § 15 citing cases. See also D. Givelber, The Right to Minimum Social Decency and the Limits of Evenhandedness: Intentional Infliction of Emotional Distress by Outrageous Conduct, 82 Col. L. Rev. 42 (1982).

[28] Ibid.

[29] Ibid.

[30] Ibid.

[31] Ibid.

[32] See 38 Am. Jur 2d § 7 citing cases.

[33] 485 U.S. 46 (1988). Mr. Justice Anthony Kennedy did not take part.

[34] See note 8, § 12, p. 59 citing Magruder, Mental and Emotional Disturbance in the Law of Torts, 49 Harv. L. Rev. 1033, 1035. See also SECOND RESTATEMENT OF THE LAW, TORTS 2D § 46.

[35] 49 Harv. L. Rev. 1053. See also SECOND RESTATEMENT OF THE LAW, TORTS 2D § 46 citing Magruder.

[36] S. Olsen, White v. Monsanto: Louisiana Adopts the Restatement Approach to Intentional Infliction of Emotional Distress, 66 Tulane L. Rev. 2096 (1992) citing Magruder.

[37] Ibid. citing 38 Am. Jur. 2d §§ 8-12.

[38] Smolla, Free Speech in an Open Society, 1993 Ed., at pp. 160-162.

[39] 403 U.S. 15 (1971).

[40] Id. at 25-26.

[41] See note 38.

[42] 395 U.S. 444 (1969).

[43] 403 U.S. 15 (1971).

[44] See Harvard Law Review, Vol. 101: 682 1988, at p. 684-687.

[45] Ibid. at 447.

[46] See note 38 at p. 165.

[47] 59 Am Jur 2d, 456 (1977).

[48] Citing Industrial Generating Co. v. Jenkins 410 SW 2d 658; Los Angeles County Winans, 109 P 640; Weberpals v. Jenny, 133 NE 62.

[49] Art. 2217, New Civil Code.

[50] Simex International, Inc. v. Court of Appeals, G.R. No. 88013, 19 March 1990, 183 SCRA 360.

[51] See Art. 2234, New Civil Code.

[52] See note 38 at p. 46.

[53] Id., citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-340 (1974).

SEPARATE CONCURRING OPINION

VITUG, J.:

The innate right of a person to an unimpaired reputation and good name is no less a constitutional imperative than that which protects his life, liberty or property. Thus, the law imposes upon him who attacks another's reputation, by slanderous words or libelous publication, a liability to make compensation for the injury done and the damages sustained.[1]

Private respondent Islamic Da'wah Council of the Philippines, Inc., a federation of more than 70 Muslim religious organizations in the country, and the other named respondents all claim, with understandable indignation, that they have been defamed by an item published by petitioners in *Bulgar*, a tabloid, circulated in the Metro Manila area. The article reads:

“ALAM BA NINYO?

“Na ang mga baboy at kahit anong uri ng hayop sa Mindanao ay hindi kinakain ng mga Muslim?

“Para sa kanila ang mga ito ay isang sagradong bagay. Hindi nila ito kailangang kainin kahit na sila pa ay magutom at mawalan ng ulam sa tuwing sila ay kakain. Ginagawa nila itong Diyos at sinasamba pa nila ito sa tuwing araw ng kanilang pangingilin lalung-lalo na sa araw na tinatawag nilang ‘Ramadan’

Private respondents, for themselves and in behalf of all Muslims, filed the complaint before the trial court against petitioners, alleging that the published article was defamatory and an insult to respondents. The trial court dismissed the complaint. On appeal, the Court of Appeals reversed the decision of the lower court and ordered petitioners to pay damages to private respondents.

Aggrieved, petitioners are now before the Court to assail the findings of the Court of Appeals on the existence of the elements of libel, the right of respondents to institute the class suit, and the liability of petitioners for moral damages, exemplary damages, attorney's fees and costs of suit.

The present controversy stems from a civil action for damages and not from a criminal complaint. The Civil Code recognizes the possibility of such a civil action either pursuant to Article 26, paragraph (4), to the effect that although it may not constitute a criminal offense, “vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition,” can give rise to a cause of action for damages, or consonantly with Article 33 which provides that in case of defamation, a civil complaint for damages, entirely separate and distinct from the criminal case, may be brought by the injured party. Both civil actions are based on tort liability under common law and require the plaintiff to establish that he has suffered personal damage or injury as a direct consequence of the defendant's wrongful conduct. In fine, it must be shown that the act complained of is vexatious or defamatory of, and as it pertains to, the claimant, thereby humiliating or besmirching the latter's dignity and honor.

Defined in simple terms, vexation is an act of annoyance or irritation that causes distress or agitation.[2] Early American cases have refused all remedy for mental injury, such as one caused by vexation, because of the difficulty of proof or of measurement of damages.[3] In comparatively recent times, however, the infliction of mental distress as a basis for an independent tort action has been recognized. It is said that “one who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress.”[4] Nevertheless, it has also been often held that petty insult or indignity

lacks, from its very nature, any convincing assurance that the asserted emotional or mental distress is genuine, or that if genuine it is serious.[5] Accordingly, it is generally declared that there can be no recovery for insults,[6] indignities or threats[7] which are considered to amount to nothing more than mere annoyances or hurt feelings.[8] At all events, it would be essential to prove that personal damage is directly suffered by the plaintiff on account of the wrongful act of the defendant.

A kindred concept, albeit of greater degree of perversity, defamation, broadly defined, is an attack on the reputation of another, the unprivileged publication of false statements which naturally and proximately result in injury to another.[9] It is that which tends to diminish the esteem, respect, goodwill or confidence in which a person is held, or to excite adverse, derogatory or unpleasant feelings or opinions against him.[10] Defamation is an invasion of a “relational interest” since it involves the opinion which others in the community may have, or tend to have, of the plaintiff.[11] The Revised Penal Code, although not the primary governing law in this instance, provides an instructive definition of libel as being a form of defamation expressed in writing, print, pictures, or signs,[12] to wit: “A libel is a public and malicious imputation of a crime, or vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.”[13]

While arguably, the article subject of the complaint could be characterized as vexatious or defamatory and as imparting an erroneous interpretation of a Muslim practice that tends to ridicule the Islamic faith, it is, however, impersonal on its face, its language not being directed at any particular person but to a large segment of society. In order that defamatory words can be actionable in court, it is essential that they are personal to the party maligned, an ascertained or ascertainable individual.[14] It is only then that plaintiffs emotions and/or reputation can be said to have been injured; thus, the plaintiff, to recover, must show that he or she is the person to whom the statements are directed.[15] Declarations made about a large class of people cannot be interpreted to advert to an identified or identifiable individual. Absent circumstances specifically pointing or alluding to a particular member of a class, no member of such class has a right of action[16] without at all impairing the equally demanding right of free speech and expression, as well as of the press, under the bill of rights.[17]

If an article, for instance, states that ‘judges in the Philippines are corrupt,’ such a general condemnation cannot reasonably be interpreted to be pointing to each judge or to a certain judge in the Philippines. Thus, no particular magistrate can claim to have been disgraced or to have sustained an impaired reputation because of that article. If, on the other hand, the article proclaims that “judges in Metro Manila are corrupt,” such statement of derogatory conduct now refers to a relatively narrow group that might yet warrant its looking into in an appropriate suit. And if the article accuses the “Justices of the Supreme Court” of corruption, then there is a specific derogatory statement about a definite number of no more than fifteen persons.

Jurisprudence would appear to suggest that in cases permitting recovery, the group generally has 25 or fewer members.[18] When statements concern groups with larger composition, the individual members of that group would be hardput to show that the statements are “of and concerning them.”[19] Although no precise limits can be set as to the size of a group or class that would be sufficiently small, increasing size, at some point, would be seen to dilute the harm to individuals and any resulting injury would fall beneath the threshold for a viable lawsuit.[20] This principle is said to embrace two important public policies: 1) where the group referred to is large, the courts presume that no reasonable reader would take the statements as so literally applying to each individual member; and 2) the limitation on liability would satisfactorily safeguard freedom of speech and expression, as well as of press, effecting a sound compromise between the conflicting fundamental interests involved in libel cases.[21]

Thus, no recovery was allowed where the remarks complained of had been made about correspondence schools,

one school suing;^[22] or where there was imputation of criminality to a union, one member suing;^[23] or where an attack was made on Catholic clergymen, one clergyman suing.^[24]

In *Newsweek, Inc., vs. Intermediate Appellate Court*,^[25] this Court dismissed a class suit for scurrilous remarks filed by four incorporated associations of sugar planters in Negros Occidental in behalf of all sugar planters in that province, against *Newsweek, Inc.*, on the ground, among other things, that the plaintiffs were not sufficiently ascribed to in the article published by the defendant. And so also it was in an older case,^[26] where the Court ratiocinated that an article directed at a class or group of persons in broad language would not be actionable by individuals composing the class or group unless the statements were sweeping but, even then, it would be highly probable, said the Court, that no action could lie “where the body is composed of so large a number of persons that common sense would tell those to whom the publication was made that there was room for persons connected with the body to pursue an upright and law abiding course and that it would be unreasonable and absurd to condemn all because of the actions of a part.”

In the present case, the subject article relates to the entire Muslim population and not just to the Islamic Da’wah Council of the Philippines or to any of the individual respondents. There is no direct reference or allusion to the federation or any of its members, or to any of the individual complainants. Respondents scarcely can claim having been singled out for social censure pointedly resulting in damages. Islamic Da’wah Council of the Philippines, Inc., itself, much like any other artificial being or juridical entity, having existence only in legal contemplation, would be devoid of any such real feeling or emotion as ordinarily these terms are understood^[27], and it cannot have that kind of reputation that an individual has that could allow it to sue for damages based on impinged personal reputation.^[28]

WHEREFORE, I vote to GRANT the petition and to SET ASIDE the assailed decision of the Court of Appeals, REINSTATING thereby the order of dismissal rendered by the Regional Trial Court.

[1] See *Worcester vs. Ocampo*, 22 Phil 42.

[2] *Black’s Law Dictionary*, 6th Ed. p. 1565.

[3] *Prosser and Keeton on Torts*, 5th Ed., p. 55.

[4] *Restatement (Second) of Torts* § 46(1965)

[5] *Prosser and Keeton*, *supra.*, p. 59.

[6] *Slocum vs. Food Fair Stores of Florida, Inc.*, Fla. 1958, 100 So. 2d 396; *Wallace vs. Shoreham Hotel Corp.*, Mun. App. D.C. 1946, 49 A2d 81; *Stavnezar vs. Sage-Allen & Co.*, 1959, 146 Conn. 460, 152 A. 2d. 312.

[7] *Taft vs. Taft*, 1867, 40 Vt. 229; *Stratton vs. Posse Normal School of Gymnastics*, 1928 163 N. E. 905; *State National Bank of Iowa Park vs. Rogers*, Tex. Civ. App. 1935, S. W. 2d 825.

[8] *Wallace vs. Shoreham Hotel Corp.*, *supra.*

[9] 53 C.J.S., *Libel and Slander* § 2.

[10] *Blacks’ Law dictionary*, 6th Ed., p. 417.

[11] *Prosser and Kecton*, *supra.*, p. 771.

[12] See Article 355, Revised Penal Code.

[13] Article 353, Revised Penal Code.

[14] *Corpus vs. Cuaderno, Sr.*, 16 SCR.A 807; *Kunkle vs. Cablenews American, et al.*, 42 Phil 757; *Borjal vs. Court of Appeals*, 301 SCRA 1.

[15] 50 Am Jur 2d (1995), p. 674.

[16] *Id.*

[17] Sec. 4, Art. III, 1987 Constitution.

[18] Restatement (Second) of Torts §564A comment b (1977).

[19] 50 Am Jur 2d, (1995), p. 675.

[20] Neil J. Rosini, *The Practical Guide to Libel*, *supra*, citing *Brady v. Ottaway Newspapers, Inc.*, 84 A.D. 2d 229.

[21] 50 Am Jur 2d, (1995), p. 675.

[22] 189 F. 86, as cited by Ella Cooper Thomas in *The Law of Libel and Slander* (New York, 1973), p. 21.

[23] 131 N.Y.S. 680, as cited in *The Law of Libel and Slander*, *supra*.

[24] 81 N.E. 459, as cited in *The Law of Libel and Slander*. *supra*.

[25] 142 SCRA 171

[26] *Uy Tioco vs. Yang Shu Wen*, 32 Phil 624.

[27] *ABS-CBN Broadcasting Corporation vs. Court of Appeals*, 301 SCRA 572.

[28] 50 Am Jur 2d (1995), p. 678.

DISSENTING OPINION

CARPIO, J.:

I dissent not because the newspaper article in question is libelous, but because it constitutes an intentional tortious act causing mental distress to those whom private respondent Islamic Da'wah Council of the Philippines, Inc. represents.

- Nature of Action: Not a Libel but a Tort Case

Private respondents filed this class suit under Articles 19, 20, 21 and 26 of the Civil Code. Accordingly, private respondents stated their case as follows:

“Statement of Case

The Civil Code of the Philippines provides:

‘Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith.’ [Art. 19]

‘Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.’ [Art. 20]

‘Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.’ [Art. 21]

‘Every person shall respect the dignity, personality, privacy and peace of mind of his neighbor and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

- (1) Prying into the privacy of another’s residence;
- (2) Meddling with or disturbing the private life or family relation of another;
- (3) Intriguing to cause another to be alienated from his friends;
- (4) Vexing or humiliating another on account of his religious belief, lowly station in life, place of birth, physical defect, or other personal condition.’ [Art. 26]

It is on account of the foregoing provisions of our Civil Code that plaintiffs brought to the court ‘a quo’ a civil case for damages on account of a published article at the editorial section of the defendant newspaper. x x x.”[1]

Petitioners acknowledge that private respondents’ principal cause of action is based on tortious conduct when petitioners state in their Petition that “[p]laintiffs rely heavily on Article 26 of the Civil Code particularly par. 4 thereof.” Petitioners, however, assert that the newspaper article in question has not caused mental anguish, wounded feelings, moral shock, social humiliation or similar injury to private respondents.[2]

Clearly, the instant case is not about libel which requires the identification of the plaintiff in the libelous statement. If this were a libel case under Article 30[3] of the Civil Code, which authorizes a separate civil action to recover civil liability arising from a criminal offense, I would agree that the instant case could not prosper for want of identification of the private respondents as the libeled persons. But private respondents do not anchor their action on Article 30 of the Civil Code.

Private respondents insist that this case is principally about tortious conduct under Article 26 of the Civil Code. Unlike the action in Article 30 of the Civil Code which must arise from a “criminal offense,” the action under Article 26 “may not constitute a criminal offense.” Article 26, adopted from American jurisprudence, covers several kinds of intentional torts. Paragraph 4 of Article 26, which refers to acts humiliating another for his religious beliefs, is embraced in the tort known as intentional infliction of mental or emotional distress. This case must be decided on the issue of whether there was such tortious conduct, and not whether there was defamation that satisfied the elements of the crime of libel.

- The Tortious Act in Question

The newspaper article in question published by petitioners states as follows:

“ALAM BA NINYO?

Na ang mga baboy at kahit anong uri ng hayop sa Mindanao ay hindi kinakain ng mga Muslim? Para sa kanila ang mga ito ay isang sagradong bagay. Hindi nila ito kailangang kainin kahit na sila pa ay magutom at mawalan ng ulam sa tuwing sila kakain. Ginagawa nila itong Diyos at sinasamba pa nila ito sa tuwing araw ng kanilang pangingilin lalung-lalo na sa araw na tinatawag nilang ‘Ramadan’.”

Private respondents claim that the newspaper article, which asserts that Muslims worship the pig as their god, was published with intent to humiliate and disparage Muslims and cast insult on Islam as a religion in this country. The publication is not only grossly false, but is also the complete opposite of what Muslims hold dear in their religion.

The trial court found that the newspaper article clearly imputes a disgraceful act on Muslims. However, the trial court ruled that the article was not libelous because the article did not identify or name the plaintiffs. Declared the trial court:

“There is no doubt that the subject article contains an imputation of a disreputable[4] act when it portrayed the Muslims to be worshipping the pig as their god. Likewise, there is no doubt that the subject article was published, the newspaper ‘Bulgar’ containing the same having been circulated in Metro Manila and in other parts of the country.

The defendants did not dispute these facts. x x x However, x x x identity of the person is not present.

It must be noted that the persons allegedly defamed, the herein plaintiffs were not identified with specificity. The subject article was directed at the Muslims without mentioning or identifying the herein plaintiffs. x x x.”

In their appeal to the Court of Appeals, private respondents assailed the trial court for “deciding the case as a libel case rather than a case for damages for violation of Articles 19, 20, 21 and 26 of the Civil Code.” The Court of Appeals reversed the decision of the trial court not on the basis of Articles 19, 20, 21 and 26, but on the ground that the newspaper article was libelous. Thus, the Court of Appeals held:

“It is clear from the disputed article that the defamation was directed at all adherents of the Islamic faith. It stated that pigs were sacred and idolized as god by members of the Muslim religion. This libelous imputation undeniably applied to the plaintiffs-appellants who are Muslims sharing the same religious beliefs.”

Thus, both the trial and appellate courts found the newspaper article in question insulting and humiliating to Muslims, causing wounded feelings and mental anguish to believers of Islam. This is a finding of fact that the Court is duty bound to respect.[5] This finding of fact establishes that petitioners have inflicted on private respondents an intentional wrongful act - humiliating persons because of their religious beliefs. Like the trial and appellate courts, we find the newspaper article in question dripping with extreme profanity, grossly offensive and manifestly outrageous, and devoid of any social value. The article evidently incites religious hatred, discrimination and hostility against Muslims.

Private respondents have certainly suffered humiliation and mental distress because of their religious beliefs. The only question is whether the wrongful act committed by petitioners, which does not constitute the crime of libel, is a case of *damnum absque injuria* or an actionable tort under paragraph 4, Article 26 of the Civil Code.

- Why Article 26 of the Civil Code was Enacted

The Code Commission explained the inclusion of Article 26 in the Civil Code in this wise:

“The present laws, criminal or civil, do not adequately cope with interferences and vexations mentioned in Article 26.

The privacy of one’s home is an inviolable right. Yet the laws in force do not squarely and effectively protect this right.

The acts referred to in No. 2 are multifarious, and yet many of them are not within the purview of the law in force. Alienation of the affection of another’s wife or husband, unless it constituted adultery or concubinage, is not condemned by the law, much as it may shock society. There are numerous acts, short of criminal unfaithfulness, whereby the husband or the wife breaks the marital vows, thus causing untold moral suffering to the other spouse. Why should not these acts be the subject matter of a civil action for damages? In American law, they are.

Again, there is meddling of so-called friends who poison the mind of one or more members of the family against the other members. In this manner many a happy family is broken up or estranged. Why should not the

law try to stop this by creating a civil action for damages?

Of the same nature is that class of acts specified in No. 3: intriguing to cause another to be alienated from his friends.

No less serious are the acts mentioned in No. 4: vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect or other personal condition. The penal laws against defamation and unjust vexation are glaringly inadequate.

Religious freedom does not authorize anyone to heap obloquy and disrepute upon another by reason of the latter's religion.

Not a few of the rich people treat the poor with contempt because of the latter's lowly station in life. To a certain extent this is inevitable, from the nature of the social make-up, but there ought to be a limit somewhere, even when the penal laws against defamation and unjust vexation are not transgressed. In a democracy, such a limit must be established. The courts will recognize it in each case. Social equality is not sought by the legal provision under consideration, but due regard for decency and propriety.

Place of birth, of physical defect and other personal conditions are too often the pretext of humiliation cast upon other persons. Such tampering with human personality, even though the penal laws are not violated, should be the cause of civil action.

The article under study denounces "similar acts" which could readily be named, for they occur with unpleasant frequency."^[6] (Emphasis supplied)

The intent of the Code Commission is quite clear: Article 26 specifically applies to intentional acts which fall short of being criminal offenses. Article 24 itself expressly refers to tortious conduct which "may not constitute criminal offenses." The purpose is precisely to fill a gap or lacuna in the law where a person who suffers injury because of a wrongful act not constituting a crime is left without any redress. Under Article 26, the person responsible for such act becomes liable for "damages, prevention and other relief." In short, to preserve peace and harmony in the family and in the community, Article 26 seeks to eliminate cases of *damnum absque injuria* in human relations.

Consequently, the elements that qualify the same acts as criminal offenses do not apply in determining responsibility for tortious conduct under Article 26. Where the tortious act humiliating another because of his religious beliefs is published in a newspaper, the elements of the crime of libel need not be satisfied before the aggrieved person can recover damages under Article 26. In intentional tort under Article 26, the offensive statements may not even be published or broadcasted but merely hurled privately at the offended party.

In intentional infliction of mental distress, the gravamen of the tort is not the injury to plaintiff's reputation, but the harm to plaintiff's mental and emotional state. In libel, the gist of the action is the injury to plaintiff's reputation. Reputation is the community's opinion of what a person is.^[7] In intentional infliction of mental distress, the opinion of the community is immaterial to the existence of the action although the court can consider it in awarding damages. What is material is the disturbance on the mental or emotional state of the plaintiff who is entitled to peace of mind. The offensive act or statement need not identify specifically the plaintiff as the object of the humiliation. What is important is that the plaintiff actually suffers mental or emotional distress because he saw the act or read the statement and it alludes to an identifiable group to which he clearly belongs.

If one of the petitioners, without specifically naming private respondents, hurled the same statement in private separately to each of the private respondents, the act would be actionable under Article 26 because it would cause mental distress to each private respondent. The fact that the statement was made publicly in fact makes matters worse because the mental or emotional distress caused on private respondents would even be aggravated by the

publicity. This merely illustrates that the requirements of libel have no application in intentional torts under Article 26 where the impression of the public is immaterial while the impact on the mind or emotion of the offended party is all-important. That is why in American jurisprudence the tort of intentional infliction of mental or emotional distress is completely separate and distinct^[8] from the twin torts of libel and slander.^[9]

The majority opinion, however, cites the U.S. Supreme Court decision in *Hustler Magazine v. Falwell*^[10] as authority that a person “may not recover for intentional infliction of emotional distress arising from a publication unless the publication contained a false statement of fact that was made with actual malice, that is, with a knowledge of falsity or reckless disregard for the truth.” The majority opinion’s reliance on *Hustler* is misplaced. The doctrine in *Hustler* applies only to public figures, and the U.S. Supreme Court found that “respondent Falwell is a ‘public figure’ for purposes of First Amendment law.” The U.S. Supreme Court held in *Hustler* that –

“We conclude that public figures and public officials may not recover for the tort of intentional infliction of emotional distress by reason of publication such as the one here at issue without a showing in addition that the publication contains a false statement of fact which was made with ‘actual malice,’ i.e., with knowledge that the statement was false or with reckless disregard as to whether or not it was true. x x x.” (Emphasis supplied)

Evidently, *Hustler* allows recovery for intentional infliction of emotional distress if the aggrieved party is a private person and not a public figure even if there is no showing that the false statement was made with actual malice. In the instant case, private respondents are not public figures or public officials but ordinary private individuals represented by private respondent Islamic Da’wah Council of the Philippines, Inc.

- Constitutional Guarantee of ‘Full Respect for Human Rights’

The 1987 Constitution provides that “[t]he State values the dignity of every human person and guarantees full respect for human rights.”^[11] The Constitution created a Commission on Human Rights with the function, among others, to “[M]onitor the Philippine Government’s compliance with international treaty obligations on human rights.”^[12] The framers of the Constitution made it clear that the term “human rights” as used in the Constitution referred to the civil and political rights embodied in the International Covenant on Civil and Political Rights^[13] to which the Philippines is a signatory. This is clear from the following exchange in the deliberations of the Constitutional Commission:

“MR. GARCIA: But it does not mean that we will refer to each and every specific article therein, but only to those that pertain to the civil and politically related, as we understand it in this Commission on Human Rights.

MR. GUINGONA: Madam President, I am not clear as to the distinction between social and civil rights.

MR. GARCIA: There are two international covenants: the International Covenant (on) Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The second covenant contains all the different rights - the rights of labor to organize, the right to education, housing, shelter, etcetera.

MR. GUINGONA: So we are just limiting at the moment the sense of the committee to those the Gentleman has specified.

MR. GARCIA: Yes, to civil and political rights.

MR. GUINGONA: Thank you.”^[14] (Emphasis supplied)

Article 20 (2) of the International Covenant on Civil and Political Rights provides that “[a]ny advocacy of x x x religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” The Human Rights Committee created under the Covenant, in its 1983 Nineteenth Session, reported to member states that:

“1. x x x In view of the nature of article 20, States parties are obliged to adopt the necessary legislative measures prohibiting the actions referred to therein. However, the reports have shown that in some States such actions are neither prohibited by law nor are appropriate efforts intended or made to prohibit them. Further, many reports failed to give sufficient information concerning the relevant national legislation and practice.

2. x x x For article 20 to become fully effective there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation. x x x.”[15]

The Covenant, being an international treaty to which the Philippines is a signatory, is part of the country’s municipal law.[16] The Covenant carries great weight in the interpretation of the scope and meaning of the term “human rights” as used in the Constitution. Unquestionably, the framers of the Constitution intentionally referred to the civil and political rights embraced in the Covenant in describing the term “human rights.” The Constitution even mandates the independent Commission on Human Rights to monitor the compliance of the Philippine Government, which includes the judiciary, with its treaty obligations under the Covenant.

Paragraph 4, Article 26 of the Civil Code makes civilly liable any person who humiliates another because of his religious beliefs. This is just a soft prohibition of advocacy of religious hatred that incites discrimination, hostility or violence, the act the Covenant seeks to curb and which the Philippine Government has undertaken to declare unlawful. Other countries that signed the Covenant have criminalized the acts prohibited under the Covenant. Since our ratification of the Covenant in 1986, the Philippines has not enacted any special legislation to enforce the provisions of the Covenant, on the ground that existing laws are adequate to meet the requirements of the Covenant. There is no other law, except paragraph 4, Article 26 of the Civil Code, that can provide a sanction against intentional conduct, falling short of a criminal act, advocating religious hatred that incites hostility between Muslims and Christians in this country.

If we are to comply in good faith with our treaty obligations under the Covenant, as the Constitution expressly mandates the Philippine Government, we must give redress under Article 26 to the outrageous profanity suffered by private respondents. Our Constitution adopts the generally accepted principles of international law as part of the law of the land. *Pacta sunt servanda* - every treaty in force binds the parties who must comply with the treaty in good faith[17]- is one such principle. Thus, if we refuse to apply Article 26 to the instant case, then we admit that we have no law to enforce the Covenant. In effect, we admit non-compliance with the Covenant.

The Supreme Court of Canada, in interpreting Canada’s obligation under the Covenant, explained in *R. v. Keegstra*: [18]

“C.E.R.D. (Convention on the Elimination of All Forms of Racial Discrimination) and I.C.C.P.R. (International Covenant on Civil and Political Rights) demonstrate that the prohibition of hate promoting expression is considered to be not only compatible with a signatory nation’s guarantee of human rights, but is as well an obligatory aspect of this guarantee. Decisions under the European Convention for the Protection of Human Rights and Fundamental Freedoms are also of aid in illustrating the tenor of the international community’s approach to hate propaganda and free expression. This is not to deny that finding the correct balance between prohibiting hate propaganda and ensuring freedom of expression has been a source of debate internationally (see, e.g., Nathan Lerner, *The U.N. Convention on the Elimination of All Forms of Racial Discrimination* (1980), at pp. 43-54). But despite debate Canada, along with other members of the international community, has indicated a commitment to prohibiting hate propaganda, and in my opinion this court must have regard to that commitment in investigating the nature of the government objective behind s. 319(2) of the Criminal Code. That the international community has collectively acted to condemn hate propaganda, and to oblige State Parties to C.E.R.D. and I.C.C.P.R. to prohibit such expression, thus emphasizes the importance of the objective behind s. 319(2) and the principles of equality and the inherent dignity of all persons that infuse

both international human rights and the Charter.”

As a signatory to the Covenant, the Philippines is, like Canada, obligated under international law and the 1987 Constitution to protect the inherent dignity and human rights of all its citizens.

- Freedom of Expression and Profane Utterances

The blatant profanity contained in the newspaper article in question is not the speech that is protected by the constitutional guarantee of freedom of expression. Words that heap extreme profanity, intended merely to incite hostility, hatred or violence, have no social value and do not enjoy constitutional protection. As explained by the United States Supreme Court in the landmark case of *Chaplinsky v. New Hampshire*:^[19]

“Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting’ words - those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.” (Emphasis supplied)

Chaplinsky expressly includes profane utterances as belonging to the narrowly limited classes of speech that are not constitutionally protected. Profane utterances, like asserting that Muslims worship the pig as their God, have no social value meriting constitutional protection. *Black’s Law Dictionary* (6th Ed.) defines the words “profane” and “profanity” as follows:

“Profane. Irreverence toward God or holy things. Writing, speaking, or acting, in manifest or implied contempt of sacred things. *Town of Torrington v. Taylor*, 59 Wyo. 109, 137 P.2d 621, 624; *Duncan v. U.S.*, C.C.A. Or., 48 F.2d 128, 133. That which has not been consecrated.”

“Profanity. Irreverence towards sacred things; particularly, an irreverent and blasphemous use of the name of God. Vulgar, irreverent, or coarse language. It is a federal offense to utter an obscene, indecent, or profane language on radio. 18 U.S.C.A. §1464. See also *Obscenity*.”

The majority opinion states that the doctrine in *Chaplinsky* “had largely been superseded by subsequent First Amendment doctrines.” The majority opinion then cites the 1971 case of *Cohen v. California*^[20] as an “illustrative” case that “American courts no longer accept the view that speech may be proscribed merely because it is ‘lewd,’ ‘profane,’ ‘insulting’ or otherwise vulgar or offensive.” However, *Hustler Magazine v. Falwell*,^[21] a 1988 case which the majority opinion also cites, clearly explains the state of American law on this matter, thus:

“Admittedly, these oft-repeated First Amendment principles, like other principles, are subject to limitations. We recognized in *Pacifica Foundation* that speech that is ‘vulgar, offensive, and shocking’ is ‘not entitled to absolute constitutional protection under all circumstances.’ In *Chaplinsky v. New Hampshire*, we held that that a State could lawfully punish an individual for the use of insulting ‘fighting words’ - those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.’ These limitations are but recognition of the observation in *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.* 472 U.S. 749 (1985) that this Court has ‘long recognized that not all speech is of equal First Amendment importance.’ x x x.” [other citations omitted] x x x.”

Indeed, while democratic societies maintain a deep commitment to the principle that debate on public issues

should be uninhibited, robust and wide open, this free debate has never been meant to include libelous, obscene or profane utterances against private individuals.[22] Clearly, the newspaper article in question, dripping with extreme profanity, does not enjoy the protection of the constitutional guarantee of freedom of speech.

- Court's Duty and Power to Enforce Constitutional Rights

The 1987 Constitution has conferred on the Court the power to “[p]romulgate rules concerning the protection and enforcement of constitutional rights.” This is an innovation in the 1987 Constitution to insure, in the words of former Chief Justice Roberto R. Concepcion, one of the framers of the Constitution, that “the protection and enforcement of these constitutional rights is something that the courts have to consider in the exercise of their judicial power.”[23] This provision stresses that constitutional rights, whether found in the Bill of Rights or in other provisions of the Constitution like in the Declaration of Principles and State Policies, are “not merely declaratory but are also enforceable.”[24]

One such right, the enforcement and protection of which is expressly guaranteed by the State under the Constitution, is the right to “full respect for human rights.” The trial and appellate courts have found that private respondents’ religious beliefs and practices have been twisted, ridiculed and vilified by petitioners. This is a clear violation of the human rights of private respondents under the Constitution and the International Covenant on Civil and Political Rights. It now becomes the duty of the Court, as the guardian of the fundamental rights of the people, to exercise its power to protect and enforce the constitutional rights of private respondents.

The Court, pursuant to its rule making power, can require that in actions like the instant case, the plaintiffs must bring a class suit. This will avoid multiplicity of suits considering the numerous potential plaintiffs all over the country. A judgment in a class suit, whether favorable or unfavorable to the class, is binding under the res judicata principle on all members of the class whether or not they were before the court.[25] This rule will address the fear that cases will swamp the courts all over the country if profanities against religious groups are made actionable under Article 26.

- The Special Circumstance of Muslim Secession in the South

Limitations on freedom of expression have always been rooted on special circumstances confronting a society in its historical development. In the 1950s, faced with rising racial tension in American society, the U.S Supreme Court ruled in *Beauharnais v. Illinois*[26] that hate speech which denigrates a group of persons defined by their religion, race or ethnic origin defames that group and the law may validly prohibit such speech on the same ground as defamation of an individual. This was the only time that the U.S. Supreme Court upheld group libel, and since then, there has been a consistent retreat from this doctrine as blacks and other ethnic groups became more assimilated into the mainstream of American society. *Beauharnais* expressly acknowledged that race riots and massive immigration of unassimilated ethnic groups justified the legislature in “punishing x x x libels directed at designated collectives and flagrantly disseminated.”

The majority opinion states also that *Beauharnais* has been superseded by *Brandenburg v. Ohio*.”[27] The majority opinion explains that *Brandenburg*, a 1969 decision, ruled that “advocacy of illegal action becomes punishable only if such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” While *Beauharnais* has been apparently weakened by subsequent decisions of the U.S. Supreme Court, it was not overturned in *Brandenburg* which did not even cite or mention *Beauharnais*. What *Brandenburg* overturned was *Whitney v. California*,[28] thus –

“Accordingly, we are here confronted with a statute which, by its own words and as applied, purports to punish mere advocacy and to forbid, on pain of criminal punishment, assembly with others merely to advocate the described type of action. Such a statute falls within the condemnation of the First and Fourteenth Amendments.

The contrary teaching of *Whitney v. California*, *supra*, cannot be supported, and that decision is therefore overruled.” (Emphasis supplied)

In any event, *Brandenburg* involved the constitutionality of a criminal statute which sought to punish the mere advocacy of violence as a means to accomplish industrial or political reform. This is distinctly different from the instant case, which involves profane utterances that have long been recognized as devoid of social value and outside the purview of constitutionally protected speech.[29]

In 1990, the Canadian Supreme Court, in *R. v. Keegstra*,[30] upheld a law criminalizing hate speech toward any section of the public distinguished by color, race, religion or ethnic origin. The Canadian Supreme Court rejected the clear and present danger test of the U.S. Supreme Court, stating that it did not address the psychological trauma hate propaganda causes and the subtle and incremental way hate propaganda works. The Canadian Supreme Court found the U.S. Supreme Court’s *Beauharnais* decision more reflective of Canadian values rather than later U.S. decisions that weakened *Beauharnais*. The Canadian Supreme Court handed down *Keegstra* at a time when Canada was becoming a multi-racial society following the influx of immigrants of different color, ethnic origin and religion. The following passages in *Keegstra* are instructive:

“A myriad of sources - both judicial and academic - offer reviews of First Amendment jurisprudence as it pertains to hate propaganda. Central to most discussions is the 1952 case of *Beauharnais v. Illinois*, where the Supreme Court of the United States upheld as constitutional a criminal statute forbidding certain types of group defamation. Though never overruled, *Beauharnais* appears to have been weakened by later pronouncements of the Supreme Court (see, e.g., *Garrison v. Louisiana*, 379 U.S. 64 (1964); *Ashton v. Kentucky*, 384 U.S. 195 (1966); *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Brandenburg v. Ohio*, 395 U.S. 444 (1969); and *Cohen v. California*, 403 U.S. 15 (1971)). The trend reflected in many of these pronouncements is to protect offensive, public invective as long as the speaker has not knowingly lied and there exists no clear and present danger of violence or insurrection.

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The question that concerns us in this appeal is not, of course, what the law is or should be in the United States. But it is important to be explicit as to the reasons why or why not American jurisprudence may be useful in the s. 1 analysis of s. 319(2) of the Criminal Code. In the United States, a collection of fundamental rights has been constitutionally protected for over 200 years. The resulting practical and theoretical experience is immense, and should not be overlooked by Canadian courts. On the other hand, we must examine American constitutional law with a critical eye, and in this respect La Forest J. has noted in *R. v. Rahey*, (1987) 1 S.C.R. 588 at 639:

‘While it is natural and even desirable for Canadian courts to refer to American constitutional jurisprudence in seeking to elucidate the meaning of Charter guarantees that have counterparts in the United States Constitution, they should be wary of drawing too ready a parallel between constitutions born to different countries in different ages and in very different circumstances. . .’

Canada and the United States are not alike in every way, nor have the documents entrenching human rights in our two countries arisen in the same context. It is only common sense to recognize that, just as similarities will justify borrowing from the American experience, differences may require that Canada’s constitutional vision depart from that endorsed in the United States.” (Other citations omitted)

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First, it is not entirely clear that *Beauharnais* must conflict with existing First Amendment doctrine. Credible arguments have been made that later Supreme Court cases do not necessarily erode its legitimacy (see, e.g., Kenneth Lasson, “Racial Defamation as Free Speech: Abusing the First Amendment” (1985), 17 Column. Human

Rights L. Rev. 11). Indeed, there exists a growing body of academic writing in the United States which evinces a stronger focus upon the way in which hate propaganda can undermine the very values which free speech is said to protect. This body of writing is receptive to the idea that, were the issue addressed from this new perspective, First Amendment doctrine might be able to accommodate statutes prohibiting hate propaganda (see, e.g., Richard Delgado, "Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling" (1982), 17 Harv. C.R.-C.L. Law Rev. 133; Irving Horowitz, "Skokie, the ACLU and the Endurance of Democratic Theory" (1979), 43 Law & Contemp. Prob. 328; Lasson, op. cit., at pp. 20-30; Mari Matsuda, "Public Response to Racist Speech: Considering the Victim's Story" (1989), 87 Mich. L. Rev. 2320, at p. 2348; "Doe v. University of Michigan: First Amendment - Racist and Sexist Expression on Campus - Court Strikes Down University Limits on Hate Speech" (1990), 103 Harv. L. Rev. 1397)."

In deciding *Keegstra*, the Canadian Supreme Court also relied on Canada's treaty obligations under the United Nations International Covenant on Civil and Political Rights which requires signatory states to prohibit any "advocacy of x x x religious hatred that constitutes incitement to discrimination, hostility or violence." During the negotiations of the Covenant, the United States objected to this provision on free speech grounds. When it finally ratified the Covenant, the United States made a reservation rejecting this provision insofar as it conflicts with U.S. constitutional protections.[31] The Covenant opened for ratification on December 19, 1966 and entered into force on March 23, 1976. The Philippines ratified the Covenant in 1986 without any reservation, just like Canada. The 1987 Constitution of the Philippines even created a Commission on Human Rights to "[M]onitor the Philippine Government's compliance with international treaty obligations on human rights." Obviously, Canada and the Philippines are alike in their obligations under the Covenant, but the United States is differently situated.[32]

In our country, there has been a long festering and bloody Muslim secessionist movement in the South, fueled not only by poverty but also by the palpable feeling among Muslims that the Christian majority is not treating Muslims fairly. Private respondents in the instant case, despite the outrageous profanity hurled at them by petitioners, chose not to join their secessionist brethren in the armed struggle but instead decided to petition our courts for legal redress of their grievance. They could have easily retaliated by flinging their own blasphemous invectives against the Christian religion. They did not, realizing perhaps that answering profanity with more profanity would mean answering hatred with more hatred, further dividing rather than unifying the Filipino nation.

Just last November of 2002, a Christian newspaper in Nigeria where the Miss World contest was being held opined that the Prophet Mohammed would have approved of the beauty contest. The newspaper stated: "What would Mohammed think? In all honesty, he would have probably chosen a wife from one of them." These words provoked bloody rioting in Nigeria among Muslims who felt insulted by the article. Hundreds died in the religious riots. Yet the offensive article in the Nigerian newspaper pales in comparison to the utterly profane newspaper article in the instant case.

Indeed, private respondent Islamic Da'wah Council of the Philippines, a federation of more than 70 Muslim religious organizations in the Philippines, deserves commendation for bringing this case before our courts for a peaceful and legal resolution of the issue. Private respondents have placed their trust and faith in our courts, knowing and insisting that they are entitled to a just remedy under paragraph 4, Article 26 of the Civil Code. It is time to breathe life to this long dormant provision of the Civil Code, to give even just a token redress to religious minorities who suffer mental and emotional distress from mindless profanity committed by irresponsible persons belonging to the religious majority. In the process we will contribute in avoiding a further cleavage in the fabric of our nation, and demonstrate to our Muslim brothers that their grievances can be redressed under the rule of law.

The instant case does not even call for a re-examination of the clear and present danger test which we have

adopted in this jurisdiction in determining the constitutionality of legislation that impinges on civil liberties.[33] Even under the clear and present danger test, profane utterances are not constitutionally protected at least with respect to profanities directed against private individuals. The special circumstance involving the Muslim secessionist movement in the South should make us more sensitive to the grievances of our Muslim brothers who continue to have faith in the rule of law in this country.

Since the peace of mind of private respondents has been violated by the publication of the profane article in question, Article 26 of the Civil Code mandates that the tortious conduct “shall produce a cause of action for damages, prevention and other relief.” Article 2219 of the same Code provides that “[M]oral damages may be recovered in x x x actions referred to in Articles 21, 26 x x x.” Private respondents are entitled to moral damages because, as duly established by the testimonies of prominent Muslims,[34] private respondents suffered emotional distress which was evidently the proximate result of the petitioners’ wrongful publication of the article in question.[35]

- Conclusion

Almost thirty years ago, I had occasion to write about Article 26 in this wise:

“At the time Article 26 was lifted by the Code Commission from American jurisprudence, many of the rights embodied therein were not yet widely accepted by American courts, and in fact even now at least one, the right to privacy, is still struggling to gain recognition in some states. While we have been quick to leapfrog American state decisions in recognizing such rights, we have, however, been painfully slow in galvanizing the same in actual cases. To date Article 26 stands almost as a mere decorative provision in our statutes, but it may be harnessed fruitfully anytime.”[36]

Now is the time to apply this provision of law since the instant case falls clearly within paragraph 4 of Article 26. Applying Article 26 will not undermine freedom of speech since the profane publication in question belongs to the class of speech that clearly does not enjoy constitutional protection. Applying Article 26 demonstrates good faith compliance with our treaty obligations under the International Covenant on Civil and Political Rights. Applying Article 26 implements the constitutional policy that the “State values the dignity of every human person and guarantees full respect for human rights.” Applying Article 26 constitutes compliance by the Court of its constitutional duty to protect and enforce constitutional rights. Applying Article 26 will help bind the wounds that mindless profanities inflict on religious minorities in violation of their human rights.

Accordingly, I vote to dismiss the petition and affirm the award by the Court of Appeals of P50,000.00 moral damages, P10,000.00 exemplary damages, and P10,000.00 attorney’s fees to respondent Islamic Da’wah Council of the Philippines, Inc. based on paragraph 4, Article 26 of the Civil Code.

[1] Brief for Plaintiffs-Appellants, pp. 4-5.

[2] Pages 16 -17, Petition.

[3] Article 30 of the Civil Code provides as follows: “When a separate civil action is brought to demand civil liability arising from a criminal offense, and no criminal proceedings are instituted during the pendency of the civil case, a preponderance of evidence shall likewise be sufficient to prove the act complained of.”

[4] Should be discreditable.

[5] *International Corporate Bank v. Gueco*, 351 SCRA 516 (2001); *French Oil Mill Machinery Co., Inc. v. Court of Appeals*, 295 SCRA 462 (1998); *Lagandaon v. Court of Appeals*, 290 SCRA 330 (1998); *Sandoval v. Court of*

Appeals, 260 SCRA 283 (1996).

[6] Report of the Code Commission, pp. 32-33.

[7] In *People v. Silvela*, 103 Phil. 773, the Court, citing American jurisprudence, stated: “If the defamatory matter is not seen or heard by anyone except the defamer and the defamed, damages to character reputation can not result since a man’s reputation is the estimate in which others hold him, and not what he himself thinks.” *Black’s Law Dictionary* (6[th] Ed.) defines “reputation” thus: “Estimation in which one is held; the character imputed to a person by those acquainted with him. That by which we are known and is the total sum of how we are seen by others. x x x General opinion, good or bad, held of a person by those of the community in which he resides.”

[8] *M.B.M. Co. v. Counce*, 268 Ark. 269, 596 S.W. 2d 681 (1980); Section 46, Restatement (Second) of Torts.

[9] *New York Times v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710 (1964).

[10] 485 U.S. 46 (1988).

[11] Section 11, 1987 Constitution.

[12] Section 18 (7), Article XIII, 1987 Constitution.

[13] Entered into force on March 23, 1976.

[14] *Simon, Jr. v. Commission on Human Rights*, 229 SCRA 117 (1994).

[15] CCPR General Comment 11, 19[th] Session (1983), Office of the High Commissioner for Human Rights.

[16] *La Chemise Lacoste, S. A. v. Fernandez*, 129 SCRA 373 (1984); *Ram Singh v. Insular Collector of Customs*, 38 Phil. 862 (1918).

[17] Vienna Convention on the Law of Treaties, Art. 26.

[18] 3 S.C.R. 697 (1990).

[19] 315 U.S. 568, 62 S. Ct. 766 (1942).

[20] 403 U.S. 15 (1971).

[21] *Supra*, note 10.

[22] *New York Times v. Sullivan*, 376 U.S. 254 (1964). Prior to *New York Times*, the prevailing view in the U.S. was that lewd, obscene and profane speech was not constitutionally protected, whether directed at private individuals or public officials. *New York Times* imposed, with respect to public officials, a qualified constitutional privilege. The U.S. Supreme Court stated that “the constitutional protections for speech and press require a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with ‘actual malice,’ that is, with knowledge that it was false or made with reckless disregard of whether it was false or not.”

[23] Record of the Constitutional Commission, Vol. 1, pp. 491-492.

[24] *Ibid*.

[25] *Re: Request of the Heirs of the Passengers of Doña Paz*, 159 SCRA 623 (1988).

[26] 343 U.S. 250 (1952).

[27] 395 U.S. 444 (1969).

[28] 274 U.S. 357.

[29] Chaplinsky v. New Hampshire, *supra*, note 18; Hustler Magazine v. Falwell, *supra*, note 10.

[30] *Supra*, note 18.

[31] Hate Speech in the Constitutional Law of the United States, William B. Fisch, American Journal of Comparative Law, Fall 2002.

[32] “American constitutional law generally protects hate speech of various kinds, including religious and racial. In this area, the law of the United States is precisely contrary to international human rights norms. Article 20(2) of the International Covenant on Civil and Political Rights states, ‘Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.’” David M. Smolin, Exporting the First Amendment?: Evangelism, Proselytism, and the International Religious Freedom Act, 31 Cumberland Law Review, 2000-2001.

[33] ABS-CBN Broadcasting Corp. v. Commission on Elections, 323 SCRA 811 (2000).

[34] Decision of Judge Vetino E. Reyes dated June 31, 1995, pp. 4-6.

[35] Article 2217, Civil Code.

[36] Antonio T. Carpio, Intentional Torts in Philippine Law, Philippine Law Journal, Vol. 47, No. 5 (December 1972).

DISSENTING OPINION

AUSTRIA-MARTINEZ, J.:

I vote to affirm the assailed decision of the Court of Appeals with certain modifications.

For a proper perspective of the issues involved in the present petition, it must be emphasized that the portion of the subject article which alludes to the Muslims as not eating pork because it is dirty is not the bone of contention of respondents, because admittedly, the Muslims may eat pork if driven by necessity, as expressed in the Quran, to wit:

“Allah has forbidden you only what dies of itself and blood and the flesh of swine and that over which any other (name) than (that of) Allah has been invoked. Then, whoever is driven by necessity, not desiring, nor exceeding the limit, no sin is upon him.”[1]

The focal point of private respondents’ claim for damages is the insult heaped upon them because of the malicious publication that the Muslims worship the pig as their God which is absolutely contrary to their basic belief as Muslims that there is only one God they call Allah, and, that the greatest sin in Islam is to worship things or persons other than Allah.[2]

Petitioners are liable for damages both under Articles 33 and 26(4) of the Civil Code. The instances that can be brought under Article 26 may also be subject to an action for defamation under Article 33. In such a case, the action brought under Article 26 is an alternative remedy, and the plaintiff can proceed upon either theory, or both,

although he can have but one recovery for a single instance of publicity.[3]

Article 33 of the Civil Code provides:

“Article 33. In cases of defamation, fraud and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.” (Emphasis supplied)

Necessarily, Article 353 of the Revised Penal Code comes into play. In the present civil case, it is necessary that respondents are able to establish by preponderance of evidence the following elements of defamation:

“1.

That there must be an imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance.

“2.

That the imputation must be made publicly.

“3.

That it must be malicious.

“4.

That the imputation must be directed at a natural or juridical person, or one who is dead.

“5.

That the imputation must tend to cause the dishonor, discredit or contempt of the person defamed.”[4]

An allegation is considered defamatory if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance which tends to dishonor or discredit or put him in contempt, or which tends to blacken the memory of one who is dead.[5]

As a general rule, words, written or printed, are libelous per se if they tend to expose a person to public hatred, contempt, ridicule, aversion, or disgrace, induce an evil opinion of him in the minds of right thinking persons, and deprive him of their friendly intercourse in society, regardless of whether they actually produce such results.[6] Otherwise stated, words published are libelous if they discredit plaintiff in the minds of any considerable and respectable class in the community, taking into consideration the emotions, prejudices, and intolerance of mankind.[7] It has been held that it is not necessary that the published statements make all or even a majority of those who read them think any less of the person defamed, but it is enough if a noticeable part of those who do read the statements are made to hate, despise, scorn or be contemptuous of the person concerning whom the false statements are published.[8]

Thus, in order to be libelous per se, the defamatory words must be of such a nature that the court can presume as a matter of law that they will tend to disgrace and degrade the person or hold him up to public hatred, contempt, ridicule or cause him to be shunned and avoided; in other words, they must reflect on his integrity, his character, and his good name and standing in the community, and tend to expose him to public hatred, contempt, or disgrace.[9] The imputation must be one which tends to affect plaintiff in a class of society whose standard of opinion the court can recognize.[10] It is not sufficient, standing alone, that the language is unpleasant and annoys or irks plaintiff, and subjects him to jests or banter, so as to affect his feelings.[11]

In the present case, it is evident that the subject article attributes a discreditable or dishonorable act or condition to all Muslims in general, a derision of the religious beliefs of the Muslims and of the objectives of respondent Council to herald the truth about Islam, in particular. The portion of the assailed article which declares that the Muslims worship the pigs as God is obnoxiously contrary to the basic belief of the Muslims.

Thus, the article is not only an imputation of irreligious conduct but also a downright misrepresentation of the religious beliefs of Muslims. It has been held that scandalous matter is not necessary to make a libel; it is enough if the defendant induces an ill opinion to be held of the plaintiff, or to make him contemptible or ridiculous;[12] or that the imputation tends to cause dishonor, discredit or contempt of the offended party.[13]

Petitioners' stance that the article "Alam Ba Ninyo?" is but an expression of belief or opinion does not justify said publication. It cannot be considered as a mere information being disseminated. Petitioners' defense that the article itself was merely a contribution of a reader, or that the writer was soliciting opinion from the readers, does not hold water, since the article did not in any way refer to such circumstance. Verily, the article, read as a whole with the other paragraphs, calls the attention of the readers to a statement of fact, not fiction, and that the writer speaks with authority on the subject matter. Bulgar in fact prides itself as being the "Pahayagan Ng Katotohanan".

Significantly, liability for libel does not depend on the intention of the defamer, but on the fact of the defamation.[14] In matters of libel, the question is not what the writer of an alleged libel means, but what is the meaning of the words he has used.[15] The meaning of the writer is quite immaterial. The question is, not what the writer meant, but what he conveyed to those who heard or read.[16]

In other words, it is not the intention of the speaker or writer, or the understanding of the plaintiff or of any particular hearer or reader, by which the actionable quality of the words is to be determined. It is the meaning that the words in fact conveyed, rather than the effect which the language complained of was fairly calculated to produce and would naturally produce on the minds of persons of reasonable understanding, discretion, and candor, taking into consideration accompanying explanations and surrounding circumstances which were known to the hearer or reader. The alleged defamatory statement should be construed not only as to the expression used but also with respect to the whole scope and apparent object of the writer.[17]

Want of intention to vilify does not render an objectionable publication any the less a libel and a publication is not excused by the publisher's ignorance that it contains libelous matter.[18] The state of mind of the person who publishes a libel is immaterial in determining liability. The law looks at the tendency and consequences of the publication rather than the motive or intention of the writer or publisher.[19] It does not signify what the motive of the person publishing the libel was, or whether he intended it to have a libelous meaning or not.[20] The defendant may not have intended to injure the plaintiff's reputation at all and he may have published the words by mistake or inadvertence,[21] or in jest, or without intending to refer, or knowing that he was referring, to the plaintiff, or any existing person, or again he may have been actuated by the best motives in publishing the words, but such facts will usually afford the defendant no defense, though they may be urged in mitigation of damages.[22]

Tested with the foregoing principles of law, there is no doubt that the article in question is defamatory under article 33 of the Civil Code. If the imputation is defamatory[23], the Court has held that malice is presumed and the burden of overcoming the presumption of malice by mere preponderance of evidence rested on the petitioners.

A careful examination of the records of the case does not reveal any cogent reason that would set aside the presumption of malice. In fact, there is convincing evidence that the publication of the assailed article was malicious, as more extensively discussed in the latter portion of herein opinion.

Furthermore, there is no showing that the instant case falls under any of the exceptions provided for in Article 354 of the Revised Penal Code, to wit:

“Art. 354. Requirement of publicity. - Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

“1. A private communication made by any person to another in the performance of any legal, moral or social duty; and

“2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.”

Consequently, there is no compelling reason to disregard the findings of the Court of Appeals that no evidence was presented to overcome said presumption of malice.

On the matter of publication, there is no dispute that the same is present, as the subject article was admittedly published in the newspaper “Bulgar” which was circulated in Metro Manila and in other parts of the country.

It must be emphasized that not only did both the trial court and the appellate court find that the subject article was published, they also held that the subject article contains an imputation of a discreditable act when it portrayed the Muslims to be worshipping the pig as their god.

But the trial court and the appellate court differed as to the presence of the element of the identity of the persons defamed. While the trial court held that the libelous article does not identify the personalities of the persons defamed and therefore respondents had no cause of action, the Court of Appeals ruled that the Muslims were the defamed persons and respondent IDCP has the requisite personality to sue for damages. The appellate court is right.

Specific identity of the person defamed means that the third person who read or learned about the libelous article must know that it referred to the plaintiff.[24] In order to maintain a libel suit, it is essential that the victim is identifiable although it is not necessary that he be named; it is likewise not sufficient that the offended party recognized himself as the person attacked or defamed, but it must be shown that at least a third person could identify him as the object of the libelous publication.[25]

It cannot be refuted that the obvious victims in the article in question are specifically identified - the Muslims. The principle laid down in *Newsweek, Inc. vs. Intermediate Appellate Court*,[26] that “where the defamation is alleged to have been directed at a group or class, it is essential that the statement must be so sweeping or all-embracing as to apply to every individual in that class or group, or sufficiently specific so that each individual in that class or group can prove that the defamatory statement specifically pointed to him, so that he can bring the action separately, if need be,” obviously applies to the present case. Certainly, the defamatory imputation contained in the subject article is a sweeping statement affecting a common or general interest of all Muslims, that is, their religious belief in Allah as the one and only God. The publication was directed against all Muslims without exceptions and it is not necessary to name each one of them as they could only have one cause of action which is the damage suffered by them caused by the insult inflicted on their basic religious tenets.

All premises considered, petitioners are indeed liable for damages under Article 33 of the Civil Code.

Significantly, the respondents brought to the attention of the Court of Appeals the failure of the trial court to appreciate Article 26(4) of the Civil Code, but the appellate court simply delved exclusively on the applicability of libel and the existence of its elements.

Ordinarily, the Court may only pass upon errors assigned.[27] However, this rule is not without exceptions. The Court has ruled that an appellate court is accorded a broad discretionary power to consider errors not assigned, involving, among others, (1) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (2) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; and (3) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.[28] Evidently, all three exceptions apply to the present case.

Necessarily, the Court has to dwell on the applicability of Article 26 (4) of the Civil Code in support of respondents' claim for damages.

Before proceeding any further, a distinction must first be made between a cause of action based on libel or defamation, whether in a criminal or civil case, and one based on Article 26. In libel, the gravamen of the claim is reputational harm; whereas, under Article 26, it can be the embarrassment, emotional harm or mental distress caused upon a person.[29] In libel cases, its four (4) constitutive elements, to wit: (a) defamatory imputation; (b) malice; (c) publication; and (d) identifiability of the victim,[30] must be established, by mere preponderance of evidence in a civil case which herein petitioners have done in the present case. Said elements, however, are not essential in a cause of action based on tort under Article 26, wherein one is liable for personal injury, whether administered intentionally, wantonly or by negligence.[31] Personal injury herein refers not only to reputation but also encompasses character, conduct, manner, and habits of a person.[32]

American Tort Law, on the basis of which, Philippine Tort Law was patterned, has recognized that if the plaintiff is shown to have suffered a wrong, the mere paucity of cases or absence of any precedent does not constitute sufficient reason for refusing relief if a sound principle of law can be found which governs, or which by analogy ought to govern.[33] The fact that a case is novel does not operate to defeat recovery, if it can be brought within the general rules of law applicable to torts.[34] Neither is the fact that a tort action does not fit into a nicely defined or established "cubbyhole" of the law has been said not to warrant, in itself, the denial of relief to one who is injured.[35] Thus, to ignore the application of the proper provision of law in the instant case would be an abdication of the judiciary's primordial objective, which is, the just resolution of disputes.

Article 26 is an integral part of the Chapter in the Civil Code on human relations, "designed to indicate certain norms that spring from the fountain of good conscience. These guides for human conduct should run as golden threads through society, to the end that law may approach its supreme ideal, which is the sway and dominance of justice." [36] Article 26, which enhances and preserves human dignity and personality, provides:

"Article 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

"(1) Prying into the privacy of another's residence;

"(2) Meddling with or disturbing the private life or family relations of another;

"(3) Intriguing to cause another to be alienated from his friends;

"(4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition." (Emphasis supplied)

The *raison d'être* for the foregoing statutory provision, as stated by the Code Commission in its Report, is worth setting forth verbatim:

“The sacredness of human personality is a concomitant of every plan for human amelioration. The touchstone of every system of laws, of the culture and civilization of every country, is how far it dignifies man. If in legislation, inadequate regard is observed for human life and safety; if the laws do not sufficiently forestall human suffering or do not try effectively to curb those factors or influences that wound the noblest sentiments; if the statutes insufficiently protect persons from being unjustly humiliated, in short, if human personality is not properly exalted - then the laws are indeed defective. Sad to say, such is to some “degree the present state of legislation in the Philippines. To remedy this grave fault in the laws is One of the principal aims of the Project of Civil Code. Instances will now be specified.

“The present laws, criminal and civil, do not adequately cope with the interferences and vexations mentioned in Article 26.”[37] (Emphasis supplied)

Thus, Article 26 provides aggrieved individuals with a legal remedy against violations of human personality, even though such do not amount to violations of penal laws. Social equality is not sought, but simply due regard for decency and propriety.[38]

Among the rights covered by Article 26 are: (a) personal dignity, (b) personal security; (c) family relations, (d) social intercourse, (e) privacy and (f) peace of mind.[39] However, it has been held that the violations mentioned in the Article 26 are not exclusive but are merely examples and do not preclude other similar acts.[40] Thus, disturbing or offensive utterances, such as threats, false statements, or insulting, humiliating, scandalous, or abusive language,[41] may give rise to an action in tort where such language causes mental or emotional disturbance, as in this case, or bodily injury or illness resulting therefrom.[42]

Paragraph 4 of Article 26 which makes one liable for vexing or humiliating another on account of his religious beliefs finds proper application in the case at bar. The Code Commission stressed in no uncertain terms that religious freedom does not authorize anyone to heap obloquy and disrepute upon another by reason of the latter’s religion.[43]

In support of respondents’ claim for damages, Professor Abdul Rafih Sayedy, Dean of the Institute of Islamic Affairs of the University of the Philippines, testified in this wise:

“WITNESS:

“A:

First, I understood that this tabloid is the voice of katotohanan but regarding this article it is not ‘katotohanan’. To the Muslim it is a blasphemy. It is an abuse and desecration and belief of the Muslims and the Muslims are commanded by God to worship no other than Him. So how could the publisher publish that the Muslims are worshipping pigs, that Muslims in his mind do not eat animals while they are also eating slaughtered chicken, cow and carabao and other non-prohibited animals. So to the Muslims this is an insult, not only to the Muslims in Mindanao but to the whole Muslim community. This is a blasphemy to the Muslims.

“Q

As a Muslim, Professor Sayedy, how do you feel about this article?

“A

I feel insulted and I feel that the beliefs of the Muslims are over abused by the publisher and it is a defamation and desecration on the religion of the Islam.

“Q

What is the concept of God insofar as the religion of Islam is concerned?

“A

The concept of God is that God is the only God, He was not begotten and He is to be worshipped and no other to be worshipped aside from him, He has no beginning and has no end, He is the creator of all creatures and He should be honored by all creatures.”[44]

Clearly therefrom, the assailed article is vexatious and humiliating to Muslims as they adore only one God, they call Allah. Muslims are called Muslims because they sincerely believe in the Quran and the Hadith (the Saying and the Conduct of the Prophet). It cannot be over-stressed that Muslims do not eat pork because it is forbidden in the Quran for being unclean not because they hold pigs as sacred and worship them; and that to the Muslims, the greatest sin in Islam is to worship persons or things other than Allah[45].

Petitioner Myla C. Aguja, who testified as Myla Tabora, admitted in open court that she: wrote the subject article; was a graduate of “Mass Com”; based the said article on her interpretation of what she recalled she had read in Reader’s Digest while she was still in high school; and did not verify if what she recalled was true[46]. Such shocking irresponsible attitude on her part who at that time was an Assistant Editor of Bulgar is utterly malicious, in the same degree as the failure of the rest of the petitioners (except Binegas, Jr.)[47] to verify the truthfulness of the subject article, for which they should be held liable for damages.

The freedom of expression and the right of speech and of the press are, to be sure, among the most zealously protected rights in the Constitution. But the constitutional right of freedom of expression may not be availed of to broadcast lies or half-truths nor may it be used to insult others, for such would be contrary to the plain mandate of the Civil Code for each person “to respect the dignity, personality, privacy and peace of mind of his neighbors and other persons.” The freedom of speech does not require a journalist to guarantee the truth of what he says or publishes but it does prohibit publishing or circulating statements in reckless disregard without any bona fide effort to ascertain the truth thereof.[48]

By causing the assailed article to be published in reckless disregard of the truth thereof, petitioners publisher MVRS, Editor-in-Chief Mars C. Laconsay, Assistant Editor and writer Myla C. Aguja (Myla Tabora) exhibited utter irresponsibility and acted contrary to the Code of Ethics adopted by the journalism profession in the Philippines, for which they deserve condemnation. The assailed article has falsely portrayed all Muslims as worshippers of pig or swine and thus, perverted their religious beliefs and demeaned the Muslims as a segment of human society. It belittled the Muslims by inverting the relative importance of their religious beliefs and practice, thereby disgracing the ideals and aspirations of the Muslim people. Such amounts to a violation of their personal dignity and peace of mind, which are the very rights affirmed by Article 26.

Petitioner Binegas should be absolved from liability. It is not refuted that the principal function of petitioner Binegas, Jr., as Circulation Manager of Bulgar, was to supervise the delivery and the distribution of the paper, monitor the accounts of the agents and schedule the circulation personnel. It is likewise un rebutted that petitioner Binegas, Jr. was never consulted on what articles are to be published; that he had no authority to decide whether or not a certain publication of Bulgar shall be circulated; and that his only duty was to distribute the issue after its printing.[49] As such, his duty being ministerial in character, petitioner Binegas, Jr., should have been exonerated from liability.

Now, do plaintiffs-respondents IDCP and its officers have the requisite personality to institute the suit? The answer is in the affirmative. Respondents IDCP and its officers have the requisite personality to institute the suit inasmuch as the action is properly a class suit.

The concept of a “true” class suit has been elucidated upon in *Re: Request of the Heirs of the Passengers of Doña Paz*,[50] thus:

“What makes a situation a proper case for a class suit is the circumstance that there is only one right or cause of action pertaining or belonging in common to many persons, not separately or severally to distinct individuals.

‘The ‘true’ class action, which is the invention of equity, is one which involves the enforcement of a right which is joint, common, or secondary or derivative. x x (It) is a suit wherein, but for the class action device, the joinder of all interested parties would be essential.

‘A ‘true class action’ - as distinguished from the so-called hybrid and the spurious class action in U.S. Federal Practice - ‘involves principles of compulsory joinder, since x x (were it not) for the numerosity of the class members all should x x (be) before the court. Included within the true class suit xx (are) the shareholders’ derivative suit and a class action by or against an unincorporated association. x x . A judgment in a true class suit, whether favorable or unfavorable to the class, is binding under res judicata principles upon all the members of the class, whether or not they were before the court. It is the nondivisible nature of the right sued on which determines both the membership of the class and the res judicata effect of the final determination of the right.’

“The object of the suit is to obtain relief for or against numerous persons as a group or as an integral entity, and not as separate, distinct individuals whose rights or liabilities are separate from and independent of those affecting the others.” (Emphasis supplied)

In order that a class suit may prosper, Section 12, Rule 3 of the Rules of Court requires the concurrence of three (3) essential elements, namely: (1) that the subject matter of the controversy is one of common or general interest to many persons; (2) that the parties are so numerous that it is impracticable to bring them all before the court; and (3) that the action be maintained by parties who will fairly and adequately represent the class.

Under the first requisite, the person who sues must have an interest in the controversy, common with those for whom he sues, and there must be that unity of interest between him and all such other persons which would entitle them to maintain the action if suit was brought by them jointly.[51]

As to what constitutes common interest in the subject matter of the controversy has been explained in *Sulong Bayan, Inc. vs. Araneta, Inc.*,[52] thus:

“The interest that will allow parties to join in a bill of complaint, or that will enable the court to dispense with the presence of all the parties, when numerous, except a determinate number, is not only an interest in the question, but one in common in the subject matter of the suit, xxx a community of interest growing out of the nature and condition of the right in dispute; for, although there may not be any privity between the numerous parties, there is a common title out of which the question arises, and which lies at the foundation of the proceedings xxx [here] the only matter in common among the plaintiffs, or between them and the defendants, is an interest in the question involved, which alone cannot lay a foundation for the joinder of parties. There is scarcely a suit at law, or in equity, which settles a principle or applies a principle to a given state of facts or in which a general statute is interpreted, that does not involve a question in which other parties are interested. xxx”

It has further been held that in order to maintain a class action there must be an ascertainable class as well as a community of interest among the members of that class in questions of law and fact involved.⁵³ The class must be cognizable and manageable, and must be defined at the outset of the action. There must be a cognizable class beyond the general strains which can be conceived to create a class of any superficially resembling parties, but it is not necessary that the exact number comprising the class be specified or that the members be identified.[54]

The first element is present in this case. The class spoken of in the assailed article that segregates them from the other members of the general populace is the Muslim people, and their common interest, undoubtedly, is their

religious belief in adoring Allah as the one and only God and that the greatest sin is to worship persons or things other than Allah. The article is an outrageous misrepresentation, inflicting stark insult on the religious beliefs of the Muslims.

Concerning the second element, i.e., numerosity of parties - one must bear in mind that the purpose of the rule permitting class actions is to furnish a mode of obtaining a complete determination of the rights of the parties in such cases, when the number is so great as to preclude involvement by actual service. In this class of cases, one is allowed to sue for all as a matter of convenience in the administration of Justice. A class action is particularly proper in an action wherein the persons are so multitudinous as vexatiously to prolong and probably altogether prevent a full hearing.[55]

Judicial notice may be taken of the fact that Muslims in this country comprise a lot of the population, thus, it is highly impractical to make them all parties or bring them all before the court. It is beyond contradiction that the Muslims affected by the assailed article are multitudinous, and therefore, the second element is present in the instant case.

With regards to the third element, that the action be maintained by one who fairly and adequately represents the class, it is essential that the relief sought must be beneficial to the class members, the party must represent the entire class asserted, and be a member of the class he claims to represent, in addition to having an interest in the controversy common with those for whom he sues.[56] For adequate representation, it is sufficient that there are persons before the court who have the same interest as the absent persons and are equally certain to bring forward the entire merits of the question and thus give such interest effective protection.[57] It has also been held that whether the class members are adequately represented by the named plaintiffs depends on the quality of representation rather than on the number of representative parties as compared with the total membership of the class.[58] Thus, even one member of a large class can provide the kind of representation for all that is contemplated by the class suit.[59]

Respondent IDCP, as a religious organization, being a federation or umbrella organization of more than seventy (70) Muslim religious organizations in the Philippines, and its officers who are individual respondents as well, carry the requisite personality to file a case for damages in behalf of all Muslims. Unequivocally, they properly represent the Muslims who are similarly situated and affected by the assailed article.

Respondent officers of IDCP, namely, Abdulrahman R.T. Linzag, Ibrahim F. P. Arcilla, Abdul Rashid De Guzman, and Ibrahim B. A. Junio, as well as their witness, Professor Abdul Rafih Sayedy, not only testified on how the assailed article emotionally, as well as psychologically, affected each of them, but also as to how the said article received the condemnation and contempt of other Muslims, further evidenced by the letter dated September 21, 1992 from thirty-one (31) students of the Islamic University Madinah Al-Mukarramah, K.S.A.,[60] and the seething letter of one Abdil T. Arafat of South Cotabato province, dated September 29, 1992.[61]

Moreover, an officer may sue in his own behalf if the defamation affects him as well as the corporation[62], or where the defamation against the officer has a direct relation to the corporation's trade or business and it causes injury[63].

Thus, without a shred of doubt, respondents IDCP and the individual respondents, and all Muslims they represent, have interest so identical that the motive and inducement to protect and preserve may be assumed to be the same in each.[64] By instituting the suit, the respondents necessarily represent all Muslims.[65]

Under Article 2217 of the Civil Code, moral damages which include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury,

although incapable of pecuniary computation, may be recovered for acts and actions based on Article 26.[66]

Individual Muslim plaintiffs-respondents, Abdulrahman R.T. Linzag, Ibrahim F. P. Arcilla, Abdul Rashid De Guzman, and Ibrahim B. A. Junio, as well as their witness, Professor Abdul Rafih Sayedy, as proper representatives of the class action testified on the despair, mental anguish, social humiliation and inferior feeling experienced by the Muslims as a result of the vexatious article.[67] Thus, the award of moral damages is justified.

The award of exemplary damages and attorney's fees is likewise warranted and the amount is in accordance with Articles 2229[68] and 2208[69] of the Civil Code.

However, damages awarded to individual respondents should be deleted inasmuch as the instant case is considered as a class suit and they merely acted as officers and members of the principal plaintiff-respondent IDCP.

One last point. There should be no room for apprehension on future litigations relating to the assailed article in view of the fact that the instant suit is a class suit. In a class suit, each member of the class for whose benefit the action is brought is a party plaintiff; the persons represented are quasi parties or parties by representation. A suit brought in behalf of others in a class gives the court jurisdiction of the whole subject matter, and of all the parties, such that the judgment will be binding on all persons belonging to the class represented.[70]

In other words, a judgment in a class action concludes upon all members of the class, whether formally joined as parties or not.[71] The class action has preclusive effect against one who was not named representative of the class, as long as he was a member of the class which was a party to the judgment.[72]

Thus, in the case at bar, the Muslims, who are parties represented by respondent IDCP and its officers, are thereby precluded from instituting separate or individual suits for damages against MRVS Publications, Inc., et al., as they are bound by the judgment in this class action, which amounts to *res judicata*.

In the light of all the foregoing, I am constrained to dissent from the majority opinion.

[1] Quran, Chapter 16:115. See also Chapter 7:145.

[2] Michael J. Diamond and Peter G. Gowing, "Islam and Muslim: Some Basic Information". 1981 New Day Publishing, Quezon City, pp. 29-30. (Michael J. Diamond is Vicar General of the Prelature of Marawi, Marawi City, Lanao del Sur; Peter G. Gowing was a Doctor of Theology in Ecumenics and Church History).

[3] R.A. Epstein, C. O. Gregory, and H. Kalven, Jr., Cases and Materials on Torts, 1984 Ed., p. 1271 citing Restatement (Second) of the Law of Torts, Section 652E.

[4] Luis B. Reyes, "The Revised Penal Code", Book II, Fourteenth Edition, Revised 1998, p. 921.

[5] Vasquez vs. Court of Appeals, 314 SCRA 460, 471 (1999).

[6] 53 C.J.S., Libel and Slander, § 13.

[7] Ibid.

[8] Ibid.

[9] 53 C.J.S., Libel and Slander, § 13. See also 50 Am. Jur. 2d, Libel and Slander, § 82.

[10] Ibid.

[11] Ibid.

[12] 25 Words and Phrases, Libel, p. 119 citing *Cooper vs. Greeley*, N.Y., 1 Denio, 347, 359.

[13] Article 353, Revised Penal Code.

[14] R. L. McEwen and P. S. C. Lewis, *Gatley on Libel and Slander*, § 89(1967), citing *Russell L. J. in Cassidy vs. Daily Mirror*, 2 K.B. 354 (1929); *Newstead vs. London Express*, 1 K.B. 377, 396 (C.A.) (1940). See also 50 Am. Jur., *Libel and Slander*, § 25.

[15] *People vs. Encarnacion* (CA), 48 Official Gazette 1817, 1820 (1952), citing Lord Bramwell in *Henty's Case*, 52 L.J.Q.B. 232 (1882).

[16] *Ibid.*

[17] *People vs. Encarnacion* (CA), *supra* citing 53 C.J.S. 48-50.

[18] M.H. Newell, *The Law on Slander and Libel in Civil and Criminal Cases*, § 6, (1924), citing *Curtis vs. Mussey*, 6 Gray (Mass.) 261.

[19] R.L. McEwen and P.S.C. Lewis, *Gatley on Libel and Slander*, § 8, (1967).

[20] *Ibid.*, citing *Nevill vs. Fine Arts Co.*, 2 Q.B. 163 (1895).

[21] *Ibid.*, citing *Blake vs. Stevens* 11 L.T. 543 (1864); *Fox vs. Broderick*, 14 Ir. C.L.R. 453 (1864); *Shepherd vs. Whitaker*, L.R.L. 10 C.P. 502 (1875); *Tompson vs. Dashwood*, 11 Q.B.D. 43 (1883); *Morrison vs. Ritchie*, 4 F. 645 (Ct. Of Sess.) (1902); *Van Wiginton vs. Pulitzer*, 218 Fed. R. 795 (1914).

[22] *Ibid.*, citing *Cook vs. Ward*, 6 Bing. 409 (1830); *R. vs. Hicklin*, L.R. 3 Q.B. 360.(1868); *Bowen vs. Hall*, 6 Q.B.D. 343 (1881); *Jones vs. Hulton*, 2 K.B. 279 (1909).

[23] *Vicario vs. Court of Appeals*, 308 SCRA 25, 34 (1999).

[24] 50 Am. Jur. 3d, *Libel and Slander* § 493.

[25] *Borjal vs. Court of Appeals*, 301 SCRA 1, 18 (1999), citing *Kunkle vs. Cablenews-American*, 42 Phil. 757 (1922), *Corpus vs. Cuaderno, Sr.*, 16 SCRA 807 (1966), and *People vs. Monton*, 6 SCRA 801 (1962).

[26] 142 SCRA 171 (1986).

[27] *Jimenez vs. Patricia, Inc.*, 340 SCRA 525 (2000); *Philippine Basketball Association vs. Court of Appeals*, 337 SCRA 358 (2000); *Victorias Milling Co., Inc. vs. Court of Appeals*, 333 SCRA 663 (2000); *Roman Catholic Archbishop of Manila vs. Court of Appeals*, 269 SCRA 145, 153 (1997).

[28] *Catholic Bishop of Balanga vs. Court of Appeals*, 264 SCRA 181, 191-192 (1996). See also *Sy vs. Court of Appeals*, 330 SCRA 550, 555-556 (2000); *Logronio vs. Taleseo*, 312 SCRA 52, 61-62 (1999); *Dando vs. Frazer* 227 SCRA 126, 133 (1993); *Espina vs. Court of Appeals*, 215 SCRA 484, 488 (1992); *Carillo vs. De Paz*, 18 SCRA 467, 471(1966); *Hernandez vs. Andal*, 78 Phil 196, 209-210 (1947).

[29] T.B. Aquino, *Torts and Damages*, 2001 Ed., p. 470, citing *Watkins*, p. 145.

[30] *Vasquez vs. Court of Appeals*, 314 SCRA 460, 471(1999); *Alonzo vs. Court of Appeals*, 241 SCRA 51, 59(1995); *Daez vs. Vasquez*, 191 SCRA 61,67(1990).

[31] 74 Am Jur2d *Torts* § 2, citing *Fisher vs. Toler*, 194 Kan 701, 401 P2d 1012.

[32] 74 Am Jur 2d *Torts* § 2, citing *Tisdale vs. Eubanks*, 180 NC 153, 104 SE 339, 11 ALR 374; *Smith vs. Buck*,

119 Ohio St 101, J62 NE 383,61 ALR 1343.

[33] 74 Am Jur 2d Torts § 4; 1 Am Jur 2d, Actions § 49.

[34] 74 Am Jur 2d Torts § 4, citing *Miller vs. Monsen*, 228 Minn 400, 37 NW2d 543, *Harris vs. Nashville Trust Co.*, 128 Tenn 573, 162 SW 584.

[35] 74 Am Jur 2d Torts § 4, citing *Seidel vs. Greenberg*, 108 NJ Super 248, 260 A2d 863, 40 ALR 3d 987.

[36] Report of the Code Commission, p. 39.

[37] Report of the Code Commission, pp. 33-34.

[38] *Ibid.*

[39] Tolentino, *supra* at 89.

[40] *Concepcion vs. Court of Appeals*, 324 SCRA 85, 94 (2000) citing *E.P. Caguioa, Comments and Cases on Civil Law*, 1959 Ed., Vol. I, p. 41.

[41] *Ibid.*

[42] 74 Am Jur 2d Torts § 32. 38 Am Jur 2d Fright, Shock and Mental Disturbance.

[43] Report of the Code Commission, p. 33.

[44] TSN, My 10, 1993, pp. 8-9.

[45] Michael J. Diamond and Peter G. Gowing, *supra*, Note 24.

[46] TSN, Hearing of November 18, 1990, pp. 8-9 and 19.

[47] See next page.

[48] *In Re: Emil P. Jurado*, 243 SCRA299, 327 (1995), citing *Ayer Productions Pty. Ltd. vs. Capulong*, 160 SCRA 861 (1988).

[49] *Ibid.*, pp. 6, 11-12.

[50] 159 SCRA 623, 627 (1988), citing 59 Am. Jur. 2d Parties § 415, *Moore, Federal Practice*, 2d., Vol. 3B, pp. 23-257, 23-258.

[51] *Certia vs. Notre Dame du Lac University*, 141 N.E. 318.

[52] 72 SCRA 347, 357 (1976) citing *Scott vs. Donald*, 165 U.S. 107, 41 Law. Ed. 447, 52 S. Ct. 217.

[53] 67A C.J.S. Parties, § 24.

[54] *Ibid.*

[55] *Ibid.* Also 59 Am. Jur. 2d Parties §§ 46, 55 and 62; 67A C.J.S. Parties, § 698.

[56] *Ibid.*

[57] 59 Am. Jur. 2d Parties § 63.

[58] *Ibid.*

[59] *Ibid.*

[60] Exhibit “B”.

[61] Exhibit “C”.

[62] 53 C.J.S., Libel and Slander, § 146 citing *Stidham vs. State Bank of Ebson*, 270 p. 594, 126 Kan 600 (1928), *Rusciano & Son Corporation vs. Mihalyfi*, 1 N.Y.S. 2d 787, 165 Misc. 932; *R.G. Dun & Co. vs. Shepp*, 91 S.W. 2d 330, 127 Tex. 80.

[63] *Brayton vs. Cleveland Special Police Co.*, 63 Ohio St 83, 57 N.E. 1085 (1900).

[64] 59 Am. Jur. 2d Parties § 62, p. 473 citing *Maxwell vs. Brougher*, 222 P2d 910, 99 C.A. 2d 824.

[65] 59 Am. Jur. 2d Parties § 62, p. 473 citing *Nunelly vs. First Federal Building & Loan Association of Agden*, 154 P.2d 620, 107 Utah 347.

[66] Article 2219. Moral damages may be recovered in the following and analogous cases:

xxx xxx xxx;

(10) Acts and actions referred to in Articles 21,26, 27,28, 29, 30, 32, 34, and 35,

xxx xxx xxx.

[67] TSNs, April 26, 1993, pp. 23, 25; July 30, 1993, pp. 13-14, 16-17; November 12, 1993, pp. 7, 9, 20-21; April 18, 1994, pp. 7, 10-12.

[68] Article 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

[69] Article 2208. In the absence of stipulation, attorney’s fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

xxx xxx xxx

(11) In any other case where the court deems it just and equitable that attorney’s fees and expenses of litigation should be recovered.

In all cases, the attorney’s fees and expenses of litigation must be reasonable.

[70] 67A C.J.S. Parties § 30.

[71] 59 Am. Jur. 2d Parties § 90, citing *Williams v. State (La)*, 350 So. 2d 131; *Schlosser v. Allis-Chalmers Corp.*, 86 Wis. 2d 226, 271 N.W. 2d 879; *Drainage Dist. Of Lincoln County v. Kirkpatrick-Pettis Co.*, 140 Neb 530, 300 NW 582.

[72] 46 Am. Jur. 2d Judgments § 108.

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